COURT BACKLOGS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

FEDERAL ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT TO REDUCE COURT BACKLOGS

AUGUST 12 AND SEPTEMBER 30, 1982

Serial No. J-97-133

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

S5-21-44

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COURT BACKLOGS

THURSDAY, AUGUST 12, 1982

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:38 a.m. in room 457 of the Russell Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee), presiding.

Staff present: Jonathan Levin, counsel; Jane Clarenbach, chief clerk.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Ladies and gentlemen, the Juvenile Justice Subcommittee of the Committee on the Judiciary is now convened.

This committee has jurisdiction beyond the range of juvenile justice programs, to include the programs where there is Federal assistance, as, for example, with the Law Enforcement Assistance Administration which comes within the purview of the jurisdiction of this subcommittee.

And it is pursuant to those responsibilities that this hearing is being held in a series of hearings on calendar control.

As part of the work of the Judiciary Committee, we are concerned with the problem of criminal law enforcement generally; we have had a series of hearings on the issue of sentencing and have produced Senate bill 1688, which is the career criminal bill; we are very much concerned about the issue of calendar control which we will direct our attention to this morning, and hereafter. And we will, in conjunction with the courts committee, be working on the issue of prisons, on the proposition that it is the trilogy of calendar control, sentencing, and corrections which ultimately will have to be directed against the violent crime problem in this country if we are to make any real inroads on that enormous problem.

Today we are going to hear from jurists about the calendar of the Philadelphia courts of common pleas. This is a court which I have practiced in, as it is known, for many years. We have a very distinguished group of jurists who are here today, Judge David Savitt, who is the administrative judge of the court of common pleas, longtime friend of mine, and a neighbor from Warden Drive in the city of Philadelphia; Judge Cipriani is here today, the administrator of the family court division, a candidate on a political ticket in 1969 which swept to victory, which featured, among others, Tom Gola,

Judge Cipriani, and Arlen Specter; and also here today is Judge Harry Takiff, who is a very distinguished jurist, who specializes at this moment in litigation involving asbestos cases, which take over a great deal of the calendar with a very great number of those cases, and Judge Takiff and I not only lived in the same neighborhood but worked on a famous grand jury investigation in 1972 and 1973, so that it is a real pleasure to welcome these judges here today.

We anticipate that District Attorney Edward Rendell will be present later this morning. We had scheduled Justice Flaherty to be present. Justice Flaherty had accepted our invitation, but late yesterday afternoon, about 5:30 p.m. we received a call from Justice Flaherty who said that he could not be present today.

We had invited as well Chief Justice O'Brien but he declined early on because of scheduling problems.

The issue of calendar control in the Philadelphia courts is replicated in many other courts in the country in terms of the problems which the courts face. The situation in New York City has been widely heralded on the front page of the New York Times over the past many months, with the controversy between the chief judge of the highest New York State court and the district attorney of Manhattan in terms of the assignment of judges and in terms of the problems which that court faces. And it is a national problem. And the issue of speedy trial is a tremendous one from the point of view of defendants', rights and also community rights to get the violent criminals on trial early so the guilty may be convicted, the innocent may be acquitted, and the sentencing process may proceed.

I would like to call upon Judge Savitt at this time. Judge David Savitt, if you would step forward, your honor, and welcome to this hearing. We would be pleased to hear your testimony.

STATEMENT OF JUDGE DAVID N. SAVITT, ADMINISTRATOR, PHILADELPHIA COURT OF COMMON PLEAS

Judge SAVITT. It's indeed a pleasure to be here, Senator Specter. I appreciate the opportunity to speak about the courts of Philadelphia and to participate in what you are doing through this committee to improve the quality of justice nationwide.

What I have done is prepare certain remarks, certain testimony, which I think is responsive to the issue before this committee. What I would like to do, first, is to set forth a brief description of the Philadelphia court system. I know this is largely known to you personally, but I think it's important to know what system we operate under in context of these hearings, for the record, and for future reference.

Senator SPECTER. Judge Savitt, that would be most appropriate. We have five members of this subcommittee—Senator Kennedy, Senator Metzenbaum, Senator Denton, and Senator Mathias. So they or their staffs will review the testimony—and it is available for the full committee as well.

Judge SAVITT. After I describe the court system, it is my intent to set forth certain problems that I believe to be inherent in the operation of large urban courts generally, specifically applicable in Philadelphia, and I will talk about some action we have taken in

Philadelphia to solve these problems, and then I would like to offer some long-term and short-term recommendations.

The Philadelphia judicial system is composed of two courts: the court of common pleas, which has general trial jurisdiction, and the municipal court, which shares jurisdiction with the court of common pleas in criminal matters involving a potential maximum sentence of 5 years or less and in civil matters in which the amount in controversy is $1,000 or less. A separate traffic court has jurisdiction over noncriminal traffic matters.

There are 81 common pleas judges, 22 municipal court judges, and 17 retired judges who serve part time with the court. The common pleas court is divided into three divisions: the family court division, orphans' court division and the trial division. As presently constituted, the trial division hears both criminal and civil matters, with 43 judges assigned to criminal cases and 23 judges assigned to civil matters.

That question came up before the hearing, Senator, that we do have presently 23 judges assigned to civil matters and 66 of our judges are involved in civil and criminal at this time.

Common pleas and municipal court judges combined annually handle close to 70,000 criminal cases, over 100,000 civil cases, more than 50,000 family court matters, and another 6,700 orphans' court matters, so you can see the magnitude of the number of cases that are processed through this system each year.

Criminal case processing in Philadelphia can be described as a two-tiered system. The lower court, or municipal court, disposes of cases involving the less serious crimes and screens serious criminal cases for the court of common pleas.

All criminal cases commence in municipal court, which conducts all preliminary arraignments and preliminary hearings for persons arrested and charged with criminal offenses. In 1981, the municipal court conducted approximately 45,000 preliminary arraignments and 16,000 preliminary hearings for cases which carry maximum sentences of more than 5 years.

Criminal cases within the jurisdiction of the municipal court go directly from preliminary arraignment to trial listing, usually in a little more than 40 days. In those cases, there is no preliminary hearing nor is there a provision for a jury trial.

As you very well know, Senator, the municipal court replaced the magistrate system, whose jurisdiction was limited to preliminary hearings in misdemeanors and I know you participated in that very, very much and played an important role in eliminating the magistrate system in Philadelphia, and I think that was a vast improvement

Senator SPECTER. The jurisdiction was limited in misdemeanor cases but unlimited in corruption cases.

Judge SAVITT. No comment.

In 1981, the municipal court disposed of approximately 23,000 such cases. By these I mean misdemeanor cases. Parenthetically, these types of cases are disposed throughout the rest of the State. All common pleas courts not only dispose of felony matters, serious felony matters and homicide cases as we are limited in Philadelphia, but they dispose of the municipal court type of case as well, which makes it very difficult to have any real comparison between

Philadelphia and other counties in Pennsylvania, because we are so unique.

Senator SPECTER. Because an individual is not afforded the opportunity for a jury trial in municipal court, he is guaranteed a trial de novo, the right of appeal to common pleas court, where he is entitled to a completely new trial with a jury, if he so desires.

During 1981, there were 466 appeals on municipal court criminal trials, which is only 7 percent of all persons found guilty in municipal court. The two-tiered system has its critics, who are that the de novo appeal gives some defendants an unfair second chance and needlessly results in duplication.

Judge Savitt, do you know statistically what the sentences were on the 93 percent of the cases which were not appealed?

Judge SAVITT. I do not have that with me at this time, although that information is available. I would suggest that the large bulk of those sentences were probation sentences rather than sentences to prison. However, I think that a similar result in those types of cases would probably occur if they were tried in common pleas court, as past practice required.

I think the fact that a large number of criminal misdemeanors are handled efficiently, without preliminary hearings and only a small percentage are appealed, is the system's best defense, and it has in fact done what it was supposed to do, which is dispose of these great multitude of cases at the preliminary hearing stage.

Parenthetically, I was talking to some distinguished lawyers in Philadelphia, some of whom I am sure you know, about the question questioning the two-tier system and some of them said that in about 10 years from now, somebody is going to come up with this brilliant idea and say, why don't we have magistrates.

So what happens is these things have a way of making the full circle.

I think the present system is a vast improvement over what we had, and I would suggest not dislodging it unless we are certain where we are going.

Cases held for trial at the preliminary hearing as well as appeals from municipal court become the jurisdiction of the trial division of the common pleas court. Common pleas judges assigned to criminal cases disposed of about 9,500 cases in 1981 and these cases are virtually all felonies including over 300 homicide cases.

Criminal trials in the court of common pleas are assigned to one of three programs. The homicide program, as its name indicates, handles all cases in which the defendant is accused of a felonious homicide. The criminal calendar program hears all cases, other than homicides, which the court believes will involve substantial legal problems, complexity of preparation, multiple defendants or a large number of witnesses. All cases in which a jury trial has been requested and all cases involving rape or arson also are assigned to the calendar program. All other common pleas criminal trials are assigned to the criminal list program, where there is no provision for a jury trial.

In both the homicide program and the calendar program, there is a calendar judge who is responsible for overseeing pretrial matters and forwarding cases which are ready for trial to the judges within

the programs. List program judges work independently and dispose of four or five cases per day from a list which is prepared by court administrative staff with the aid of computer information.

Civil trials in Philadelphia in which the amount in controversy is more than $1,000 are heard in the court of common pleas. Those in which the amount in controversy is $1,000 or less are tried before a judge without a jury in the small claims division of municipal court, as are landlord and tenant matters. Appeals from verdicts in small claims court are heard in the court of common pleas.

Common pleas court civil cases in which the contested amount is between $1,000 and $20,000 are, with the specific exception of those involving real estate or equity matters, heard by a court appointed panel of three lawyer arbitrators, whose findings have the same force and effect as a court decision. This, of course, is reference to our arbitration program, which I am going to allude to subsequently in another way.

The arbitration program, by the way, together with the two-tier system in the municipal court are what I believe in the last 10 years has been able to keep us afloat both in the civil side and criminal side respectively.

The findings of the arbitrators are appealable to the court of common pleas and are assigned to the general trial list, which also includes all cases which, because of substantive or procedural legal principle, may not be submitted to arbitration. The general list is divided into a jury and nonjury list and equity matters are, by reason of law, assigned to the latter. Civil actions involving more than $20,000 which are not otherwise barred by law or procedure as above listed, are assigned for trial to the major case list.

Copies of the court's annual reports for the last several years have been made available to your staff and set forth some of these statistics more completely, and if they in any way can be helpful, if there is any other information you desire, we will be happy to cooperate and make it available.

The criminal case processing system which I have described is extremely complex and difficult to administer because of the enormous volume of cases involved. It is a system which has evolved as a response to overwhelming problems in the face of increasing crime and more serious crimes in the 1960's, this coupled with a shortage of judges and courtrooms, caused the development of this system.

In 1964, six new common pleas judgeships were authorized by the State legislature. This was the first increase in Philadelphia since 1937. It was not until 1972, however, that the shortage of judges was remedied by authorization of an additional 25 common pleas court judges.

I do not think our problem in Philadelphia today is a lack of judges. I think that the criminal system continues because we have insufficient facilities; there continues to be a larger and larger volume of cases coming into the court; there is diverse ability and philosophy of judges, which permits a system such as this to continue, and I think it is largely really the result of inertia. In my remarks later on today, I do want to talk about some things that I think we can do to improve and change from this system.

I think I have described as much as is reasonable at this time the system in Philadelphia. What I would like to do now is discuss certain problems which are inherent in the operation of large urban courts.

Time and time again, as these hearings continue, you will probably hear other judges and administrators describe similar problems.

I think the No. 1 problem throughout the country with urban courts are budgetary constraints, and that is important to this committee, since I believe some funding power lodges in this committee, and ultimately some funds can be distributed down through large urban areas through this committee, Senator.

I would suggest that at the root of many of the most serious problems confronting the urban judiciary, which I will discuss, is inadequate funding. Major urban courts receive far less than adequate funding to properly function, and without sufficient funds, judicial reforms cannot be fully implemented. The allocation of money is out of proportion to the volume of work courts are expected to perform. Now, this is due in part to the general financial problems of large cities, but it is also due to a reluctance on the part of government officials to adequately fund the criminal justice system. With resources dwindling and criminal case volume increasing, the courts must resort to practical experiences in order to keep abreast, so I think lack of funding is basically the most important problem confronted.

Caseload increase is another problem.

Following national trends, the volume of criminal cases and civil litigation in Philadelphia continues to increase numerically and in complexity. During the past 2 years, the volume of new criminal cases has increased by approximately 25 percent each year. And that is an enormous increase, Senator. On the civil side, additionally, there has been a proliferation of litigation of an increasingly complex nature. Judge Takiff is here; he will speak of asbestos cases; there are also more malpractice cases, libel cases, condominium conversion cases, cases which are more complicated and take more and more judicial time.

There is an increase in demand for jury trials, which is a problem inherent in the operation of large urban courts.

In Philadelphia, the increase in demand for jury trials has occurred in the civil side in asbestos cases and on the criminal side as a result of changing sentencing practices which threaten to undermine the structure of the justice system.

The list room program in Philadelphia, presently—to that program are presently assigned eight judges for nonjury cases before whom defense counsel and the district attorney generally waive jury trial.

Senator SPECTER. They have not waived in advance of the assignment to those list rooms, though, have they, Judge Savitt?

Judge SAVITT. Yes, they have. They have indicated that they waive their right to a jury trial; however, of course, it is not permanently barred, and they have a right before trial to ask for a jury trial, in which case the matter is referred to the calendar judge, who assigns it through the jury program.

Senator SPECTER. How frequently does that occur?

Judge SAVITT. Not that frequently at present; but it depends upon the judges who are assigned. We know in advance that these judges are the type of judge who is acceptable to both the district attorney and defense counsel. If we assign a judge who philosophically sentences more harshly or who—or is—or conversely is too easy, too lenient, either the district attorney or the public defender will be reluctant to try and will ask for jury trials and will curtail the efficient operation of the system.

Senator SPECTER. Does the district attorney now have the right to demand a jury trial?

Judge SAVITT. I think he does. That was——

Senator SPECTER. That was abrogated during the early 1970's by the State supreme court.

Judge SAVITT. That is correct. I could be incorrect on that but I think that it is and I think presently he does have that right.

In any event, he certainly can avoid the list room if he chooses to. Now, I am not suggesting that this program is the best program; and as I said, I want to make some recommendations before I leave here today. But what I am pointing out is that through this program, we adjudicated 5,000 cases in the first 6 months of 1982. In fact, only 271, or 4 percent, of the criminal cases disposed between January and June of this year required jury trials. Now, I am addressing this as a problem created by an increase in jury trials and what would happen to the system in Philadelphia and I think in other large urban areas.

I think it is obvious that the smooth operation of our justice system depends upon the limited use of jury trials.

Now, the continued operation of these procedures is in jeopardy because of the imposition of statewide sentencing guidelines which are effective for cases committed after July 23, and that we also have mandatory sentencing for certain crimes committed after June 6, 1982, and based on an analysis of our 1981 disposition which fit these mandatory sentencing categories, it is clear that such cases have not traditionally been tried by juries; they have been waiver cases.

The problem——

Senator SPECTER. And have they resulted in the kinds of sentences which are now mandated?

Judge SAVITT. Some have and some not. We are still reviewing that. However, the district attorney in Philadelphia—and I understand he is going to testify here later—has indicated his intention not to engage in any charge bargaining. And that is his right and privilege and I am not suggesting it isn't the correct route to go. However, I am suggesting that it is different from what has occurred in other jurisdictions where mandatory sentencing are in effect and if, in fact, he follows that route, there will be no advantage whatsoever for any defendant to waive a jury trial which will increase the number of jury trials, which will put a very strenuous burden on the system.

For what it is worth, we are——

Senator SPECTER. The judge would still have discretion to sentence to a higher number of years than the mandatory minimum though, wouldn't he, judge?

Judge SAVITT. I think so, yes. But I don't think that the fact that he can do that won't act to reduce jury trials. We expect to need, Senator Specter, five additional criminal courtrooms and, as I will point out later, these rooms are not available except in city hall. We have had some meetings—a member of your staff, Johnathan Levin, has been present at some of them—in which we are hoping to build five new courtrooms in city hall annex across the street, and you will be seeing sheriffs taking prisoners across East Penn Square after the first of October, which is certainly far from the best security situation; but it is necessary, and we all agree that it is necessary if we are to keep our heads above water and we do get the new jury trials that are expected.

Senator SPECTER. Judge Savitt, the possibility of a longer sentence sometimes does have an effect upon defendants and defendants' lawyers. One of my first experiences as a volunteer defender in March of 1958, was representing a man who was accused of four taxicab robberies at knifepoint. And the judge called the district attorney and me up to the side bar and said, if there is a waiver—if there is a guilty plea, it is going to be 2½ to 5; and if there is a waiver, it is going to be 5 to 10 on conviction. And if it is a jury trial, it was going to be 10 to 20, which was the maximum. And I was not perturbed by that and recommended that we proceed to trial, but with some circumspection so we did not demand a jury, and on a waiver, the defendant was found guilty, and we knew that it was 5 to 10; and I then went and looked at the files, which the assistant district attorney made available, and the pattern was unmistakable and guilty pleas were entered on the other three cases, which aggregated 12½ to 25 years.

Now, you might think that with a base of 12½ to 25 years there would not be any greater concern of a maximum of 20 to 40, but there was.

Judge SAVITT. Did that judge put that on the record? He didn't say on the record that the sentence would be different depending upon whether there was a guilty plea or a waiver before the trial?

Senator SPECTER. You will not be surprised to hear that he did not put that on the record.

That case was later—it was later a celebrated case during a fall season when there was an election in Philadelphia, and I happened to be a candidate that year; it was a regular year. And there was a claim of ineffective assistance of counsel. I was district attorney at the time. And that defendant in 1967 when there was a mayoralty campaign came forward and filed a petition that he had been denied effective assistance of counsel. That case was happily put over until after the elections, at which point the assistance of counsel became satisfactory.

Judge SAVITT. I thought you were going to say that after your experience with that case you described as a defense counsel, you immediately decided to run for district attorney. [Laughter.]

Senator SPECTER. No, not quite.

Judge SAVITT. There are—if I may, Senator, going back to some of the problems inherent in an urban court, one of them—in fact, maybe the most significant, is the lack of court facilities. It is not uncommon to find inadequate court facilities in large urban areas. I would suggest that Philadephia has an inadequate, inefficient, in

fact, we don't even have a courthouse. We are tenants in Philadelpia's city hall, which combines the functions of a city hall and county courthouse in a building whose structure was begun in 1872 and was designed for 21 judges.

A recent study of all courthouses in Pennsylvania commissioned by the Supreme Court of Pennsylvania—and this study was completed in December 1981 by the department of architecture at Penn State—found the city hall facility inefficient, inadequate, inappropriate, and unsafe.

Among the problems noted by that—especially noteworthy, are the problems of security of judges, witnesses, defendants, staff and the general public in the courtrooms, corridors, and elevators.

The transportation of defendants from the detention center in Northeast Philadelphia to center city court facilities creates frequent trial delays. Because we have outgrown these facilities, unsuited as they are, a number of units of the court, including noncriminal courtrooms, are spread out in many locations outside of city hall, resulting in duplication and lost time as judges and support personnel travel from one location to another.

Although city hall has its security problems, it is the only facility which has cell space for the temporary holding of adult detentioners needed in court. It has therefore been necessary to use all courtroom facilities in city hall for criminal matters, and that is all we do. All of our criminal cases now are in city hall, because that is the only place we have cell space.

Now, over the years, renovations have made it possible to open new courtrooms in city hall. I said it was built for 21 judges; there now 50 courtrooms in city hall. But the limit of usable space has now been reached. Any new court facilities opened to meet the projected press of jury cases resulting from mandatory sentencing will now have to be located outside of city hall.

Senator SPECTER. Why do you say it was built for 21 judges?

Judge SAVITT. Well, that is what the records disclose as far as—my staff gave me that. In 1872, they expected 21 judges. Now, my recollection is, we had 7—of course, it had to be even less than that, didn't it, Senator, because there were—when I first started to practice law, there were 6 courts with 3 judges, which was 18, but there was also 6—CP 6 was——

Senator SPECTER. Common pleas 7 came into effect in 1937, which had Sloan, Oliver, and Crumlish.

Judge SAVITT. All right. Well, that was the 21.

Senator SPECTER. But that was a long time after the courthouse was constructed.

Judge SAVITT. Well, there were other judges——

Senator SPECTER. Judge Takiff is holding up five fingers, and he has another hand.

Judge SAVITT. In any event, it was never dreamed that the type of operation, the amount of cases that we try in city hall today would be tried in that building when it was built. It wasn't designed for that at all.

Another problem is the limited defense bar, and this is—here are a limited number of defense attorneys—I am talking about criminal cases—in large urban areas. And this is largely because there are other more lucrative and less stressful ways to practice law.

In Philadelphia, the size of the private defense bar has dropped, so that demands on individual attorneys practicing criminal law has increased. The process of scheduling cases involving these attorneys, who often have matters in the Federal court and in surrounding counties, as well as other courts in our own system, is very time consuming and results in an undesirable number of continuances in spite of our efforts to avoid this.

Those are some of the problems I find to be inherent in an urban court system. I would like to tell you and this committee some of the accomplishments we have made in Philadelphia which might be helpful elsewhere.

In the first 6 months of 1982, the inventory of criminal cases awaiting adjudication has been reduced by 25 percent. Now, this is a fact, and it is a remarkable achievement of which we are enormously proud.

Senator SPECTER. In the first 6 months of——

Judge SAVITT [continuing]. 1982, our inventory of untried cases has gone from 5,182 to 3,883. That is 25 percent.

Senator SPECTER. Could you repeat those statistics, Judge?

Judge SAVITT. We started the year with 5,182 untried criminal cases. As of July 1, 1982, we were down to 3,883. We averaged 1,200 case dispositions per month.

Senator SPECTER. How do you account for that?

Judge SAVITT. I am going to tell you that, Senator.

I account for it because of a new continuance rule which was promulgated February 1, 1982, in which I proudly participated. I sat down with the defender, the district attorney, members of the criminal justice section of the bar association, municipal court personnel, and we worked out what we believe to be a workable continuance rule specifically defining when continuances would be granted.

We eliminated the continuance for I didn't get paid; we changed the concept that you must necessarily be given a continuance on the first listing; I am not prepared at this time to set forth with particularity more what the rule said, but it was a strict continuance rule which everyone cooperated with; that's No. 1.

No. 2——

Senator SPECTER. Have you had fewer continuances?

Judge SAVITT. Yes; our continuance rate has declined, and it declined more markedly when the rule was first instituted. As we get into May and June, there is a tendency to relax and go back to the old ways. Your experience, I am sure, is similar to mine, that sometimes when a new program, or new rule is instituted, it immediately—everyone cooperates with it; as time goes on, they sometimes revert back to their old ways. We are trying to make sure that this does not happen.

Additionally, we had a Saturday court program. This Saturday program, we had four judges sit on 20 Saturdays between January and June, and as a result of that, disposed of 391 felony cases.

Senator SPECTER. Twenty Saturdays? How many judges sat?

Judge SAVITT. Four judges each Saturday for 20 Saturdays from January to June. And that way we disposed of 391 cases. It is approximately 20 cases per Saturday. We had 52 or 53 judges participate in this program. They were selected because of their ability to

be amenable to both the defense bar and the district attorney so as not to generate jury trials. And I am not suggesting that this is the best of all worlds, but it was a reasonable expedient to help reduce this backlog which had reached gigantic proportions before the first of the year.

Another thing we did——

Senator SPECTER. Is that program going forward?

Judge SAVITT. No; we don't think it is necessary to continue with it. We don't think courts ought to work on Saturdays unless emergency exists; we think judges like everyone else, are entitled to have some time to reflect, to have some certainty concerning their weekends, to work hard, but we don't think we should set a precedent where the courts in Philadelphia, or courts anywhere, should be open more than 5 days per week. If the need arises, we would do it again.

I think we brought the backlog within manageable limits now, and we need not do it. I think if we continue strict adherence to the new continuance rule—and one other factor is, we built two new courtrooms. The court's maintenance staff actually built two new criminal courtrooms in city hall. With the use of these two criminal courtrooms, the new continuance rule, longer working hours of judges, the cooperation of judges, we were able to make these gigantic strides.

I don't expect we will have to revert to Saturday court again. I would suggest at this time there is no backlog in Philadelphia. There is an inventory of cases, but it is a manageable inventory; it is only enough cases on hand for 4 months, which in terms of the 180-day rule, the 6 months permitted to dispose of criminal cases isn't out of line at all.

Senator SPECTER. What is the inventory of cases? Do you have a breakdown, Judge, as to how many——

Judge SAVITT. Well, I said the criminal—it has been reduced to 3,883 right now. There are 4,000 roughly, criminal cases. There are less than 4,000 criminal cases.

Senator SPECTER. Do you have a breakdown as to how many people are charged with armed robbery who are on bail awaiting trial, or charged with rape on bail awaiting trial?

Judge SAVITT. That information would be available. I don't have it with me now, but it is certainly available to your staff, and I have got a processing unit that can make that available and any other information that you would like we will be happy to comply with any request. We want to cooperate fully with what you are trying to do, Senator.

Senator SPECTER. Judge Savitt, I would be very interested to know, as of July 1, how many defendants are on bail charged with homicide, robbery, burglary, rape, and arson.

Judge SAVITT. I would be very happy to supply that.

Would it be possible for someone on your staff to drop me a note, put that request in writing tomorrow, and then I will see that it is done.

Senator SPECTER. All right.

Judge SAVITT. I would appreciate that.

Another thing we have done in Philadelphia, is in February 1982, a new arbitration center was opened. I made reference previ-

ously to our arbitration program which is with civil cases where the amount in controversy is from $1,000 to $20,000.

Now, we now have fully operational a new arbitration center, 1234 Market Street. This center has made the expedited resolution of many cases possible, and has effected savings to the city.

What we do now is give a date at the arbitration center 8 months from the time the civil action is commenced. A lawyer files a case where the amount in controvery is under $20,000 in the Prothonotary's office; he files his complaint; he has a date for trial 8 months later in the arbitration center.

The case is tried; the hearing rooms are there; the witnesses are there; everyone is accommodated in a very pleasant atmosphere. The arbitrators are paid immediately. There is no loss of funds to the city where cases are continued. Arbitrators make more money; the city saves money; the public is served better.

This center has received acclaim from the bar, the public and—incidentally, Chief Justice Warren Burger, who sent a personal representative to inspect it as a model for arbitration programs nationwide.

In January 1982, our civil motion court was reorganized. We assigned two judges full time to review civil motions which replaced a system where motions were distributed to all CP judges. This has—this better serves the public and the bar; it discourages the filing of frivolous and dilatory motions; it avoids disparity in decisions, and as a result, effective July of this year, the civil motion court list is current.

Where motions are decided properly, the trial of civil cases of course is expedited.

Senator SPECTER. What is the backlog now, Judge? What is the average time from the filing of a civil complaint may the litigant get into a civil jury trial room?

Judge SAVITT. How long it takes for a civil case to come to trial?

Senator SPECTER. Yes.

Judge SAVITT. I think we are doing that in less than 3 years now. We have eliminated the certificate of readiness, which means that the court now is monitoring cases from the time the complaint is filed.

Up until recently, the court didn't take control of the cases until the certificate of readiness was filed, regardless of when the complaint was filed. We tried our cases chronologically from the date of complaint, but they didn't get on our trial list until the lawyers indicated they were ready for trial. This has recently been abrogated.

All our cases must be ready for trial within 1 year, pursuant to a local rule. There was a 240-day State rule, which was abrogated.

Senator SPECTER. There is no longer a certificate of readiness?

Judge SAVITT. No longer a certificate of readiness.

Senator SPECTER. Do lawyers have to put the case on the trial list?

Judge SAVITT. The case after a year goes on the trial list. They must be ready. Now, if the discovery is not completed, it is at their peril. We are not yet ready to try cases within a year, so this hasn't posed a problem.

Senator SPECTER. So you are ready to try within 3 years you say?

Judge SAVITT. I think it is less than 3 years and I would ask you to repeat that question when Judge Takiff testifies, who is very familiar with what is going on in the civil side, but I think I can safely respond that we are within 3 years in civil cases, which is a vast improvement to what it was when—10 or 12 years ago.

The president judge and I recently decided to engage a management consultant to review the operations in the Prothonotary's office.

This office, which has its origins in antiquity, is currently overwhelmed with the volume and variety of civil paperwork and I believe it requires a professional review of its accounting and operational procedure. We want to have a management study and expect to institute changes to insure an efficient operation of this key office.

Incidentally, effective September 1, all docketing procedures of the Prothonotary's office will be fully computerized, replacing the outmoded manual operations. Heretofore, we have had both a manual and computer operation. We are prepared September 1 to go strictly to computerization in the Prothonotary's office.

During this past year, the court's fiscal unit was reorganized and streamlined. By implementing new procedures, tighter restraints are placed upon the usage of overtime, and a new strict purchasing procedure was implemented for purchasing supplies, materials, and equipment. A hiring freeze has been in force since February 1982. The number of employees in the court's general fund budget has been reduced and promotions are being strictly limited. I am reviewing each unit within the court to determine where jobs can be eliminated and positions terminated. This is because we are taking a 5-percent across-the-board funding cut for fiscal 1983, and we are going to have to abolish some units and give up some jobs.

Senator SPECTER. What is your total budget now, Judge Savitt?

Judge SAVITT. It is a little over $40 million, and by the way we have not increased our employment complement in 7 years, and we are decreasing, we have decreased the employment complement in the last year.

When I talk about a budget of $40 million, and you hear from other cities, I think you will probably find that their budgets are less; however, we have a——

Senator SPECTER. Our budget here is $775 billion.

Judge SAVITT. Well, what we do in the courts in Philadelphia is incomparable to anything as huge as that. But I do want to say, Senator, that there are certain things that happen in Philadelphia that may be unique.

In Philadelphia as employees of the court are all the employees of the prothonotary, all the employees of the jury selection board, all probation officers, all family division employees, writ servers, all the pretrial service division in ROR, all the data processing units, custodial, maintenance, judical staff, court officers and court criers. So we do in Philadelphia, under the auspices of the court with court employees what many other jurisdictions do with employees who are hired by city government, county government, et cetera, et cetera.

There were a number of problems inherent in the operation of the courts which result from the constitutional separation of

powers. A court administrator must orchestrate various parties involved in the judicial process while not upsetting a delicate balance. I mention that because I am leading into something that we have in Philadelphia that may be unique and I think is enormously important, and not enough is being done with this; and that is the criminal justice coordinating commission.

Judge Bradley and I are members of it, as is Judge Glancey.

This group is comprised of the heads of criminal justice agencies, a cross section of local public officials, and other appointed community members. It includes the district attorney, the defender, the sheriff, the city council president, the managing director, the police commissioner, et cetera. And it meets regularly to discuss timely problems confronting the criminal justice system. Now, I think this is a magnificent idea, where everybody sits down and everybody can work together to try and solve these problems which go across the authority of the individual officials.

Examples of recent projects undertaken include trial delay reduction, prison overcrowding reduction, court security, efficient prisoner transportation. And in each case, commission staff, with the help and cooperation of the individual agency personnel, study the problem, make recommendations, assist in implementation of solutions, and even try to help obtain funds——

Senator SPECTER. Judge Savitt, are you pretty close to the completion of your prepared statement?

Judge SAVITT. Yes, yes.

Senator SPECTER. Because there are quite a number of questions which we have, and if you could, brief through it, I would appreciate it.

Judge SAVITT. All right. I want to make some recommendations that I think are important, and some are short term and some of them are long term.

I think of the short-term recommendations which would be applicable to Philadelphia also could be applicable to other courts. I think we have to implement mandatory sentencing legislation so that we do get additional jury courtrooms; I recommended to the president judge that the court's fiscal and personnel offices be headed by a professional manager with experience in accounting, budgeting and other financial and personnel matters. I think that is enormously important, that someone of that caliber be in a court system this large.

I think there should be funding for the criminal justice commission; I think we need additional sheriffs; I think in the long term, we need a new justice center. I think in the long term we should consolidate the common pleas, municipal and traffic courts in Philadelphia.

Philadelphia Municipal and Traffic Court should be placed under the administrative control of the president judge. This was recommended by the way by the Pomeroy Commission, which is a 38-member committee that studied Pennsylvania's justice system, headed by former Chief Justice Pomeroy.

I believe we should eliminate the elected offices of the clerk of courts, the register of wills and the sheriff and have these officers appointed by the president judge.

Senator SPECTER. How about eliminating the elected office of judge?

Judge SAVITT. I have difficulty with that. I am not at all satisfied with the manner in which judges are selected. I am not sure that there is really a better alternative that has been suggested at this time.

Senator SPECTER. How about appointment of judges by merit selection commissions?

Judge SAVITT. I think there ought to be merit selection. I don't think anyone could quarrel with that. The question is what constitutes merit selection? Who is doing the selection? In Plato's——

Senator SPECTER. That was my first question, Judge Savitt, which I found just a little opening for, and let's pursue that for just a minute.

Why not use the Federal system, where judges are appointed by the Chief Executive. On the State level it would be the Governor, after a recommendation by a panel, perhaps the bar association or something analagous to it as Federal judges are screened very carefully by a number of panels. Senator Heinz and I, for example, have a recommending panel on the first level, and then the screening is done beyond that by the American Bar Association.

Wouldn't that be calculated to produce a better caliber of judges?

Judge SAVITT. Well, I am not sure. It might. There is something—in the appointments that we have recently had, I don't know that the appointments that the Governor makes prior to the election in Pennsylvania—and we do have a system where he fills a vacancy by appointment—that we have really improved the caliber of judges. I think that there is politics still involved, and there is something where politics is involved, where personal preferences come into play, where people bend merit selection, where it isn't truly merit, but it is merit as determined by one particular group rather than another; where there is an inability to have everyone agree that something is fair. Then you revert to the electorate, which has been in existence for a long time and has produced an adequate judiciary.

I remember when I ran for judge——

Senator SPECTER. Do you think the judiciary is adequate today in the common pleas system in Philadelphia?

Judge SAVITT. Yes. I think it is adequate. I do think it is adequate. I will say this, if it is inadequate, I don't think it would be any better or worse if you changed the method of selection.

I ran for judge——

Senator SPECTER. Starting with "adequate" is not a very high level.

Judge SAVITT. I don't think that——

Senator SPECTER. Would you say that it is good, superior, excellent?

Judge SAVITT. The quality of our judges varies just like the quality of any profession. We have some magnificent judges; we have some who are more adequate; we have some who are less capable. I think that the judiciary in Philadelphia in terms of the men and women who serve there is surely adequate and maybe even better than adequate.

Senator SPECTER. Judge Savitt, when you point out the pitfalls of whatever selection process, I don't disagree with that. When you then say that the electorate should make the choice; the electorate has been around a long time, that is a fine generalization, but the reality is that in Philadelphia, on the last selection of judges, they were made in the councils of the political party and the determination was really dictated on primary election day by the political professionals, as opposed to the voters. You and I have been involved in one or two of those.

Isn't that really the fact of the matter?

Judge SAVITT. Well, Senator Specter, it is; but I don't—recollect that when I ran for judge there were good judges for Philadelphia, and there were 30-some judges on the ballot——

Senator SPECTER. Thirty nine.

Judge SAVITT. All right.

And the good judges from Philadelphia went in there and tried to make an evaluation, and they had ballots with the purple stickers——

Senator SPECTER. Purple stickers.

Judge SAVITT. It was more important to me, Senator——

Senator SPECTER. Purple plagiarism.

Judge SAVITT. It was more important to me, Senator, to be endorsed by the good judges than to be elected. I remember saying to my wife, gee, I don't even care if I win this, I just want to be designated as a "good judge" by the——

Senator SPECTER. When I call the next witness, Mr. Savitt, I want your cooperation. [Laughter.]

Judge SAVITT. The thing is, as I look back, Senator, the good judges didn't pick the best judges. They tried. There were—and I don't think it would be appropriate at this point to go through them one by one—but their effort, the people who they made the best judges, I can tell you are not the best judges, not necessarily, not all of them, it is mixed; it is a mixed bag. It is such a very difficult thing to do that I am not really satisfied that the way we are doing it is correct; I am not sure really the way we should go.

Senator SPECTER. Judge Savitt, evaluate for me—wouldn't you agree to ask a slightly leading question to a witness who knows how to answer as he chooses that the quality of the Federal bench in Philadelphia in general is significantly superior to the quality of the common pleas bench in Philadelphia?

Judge SAVITT. I am not prepared to say that. I am prepared to say that the facilities that they operate under, the type of cases they get, the problems that they are confronted with, the way they are treated by the press, the salary that they receive, all create an awe about them that distinguishes them from us.

Senator SPECTER. It is just a matter of image?

Judge SAVITT. Now, also it is a much smaller bench, and I don't doubt that what you say may have some credence to it, and it may be so to a limited degree, but to suggest that Federal judges in Philadelphia are good and common pleas court judges in Philadelphia are not is really not seeing the full picture; because I think I could name 20 of the judges on our court who are absolutely magnificent, and it is a credit that they serve, and unless the image of the judiciary improves, nobody is going to want to serve on that

court; unless we get more money, nobody is going to want to serve on that court.

Senator SPECTER. Judge Savitt, I think you put your finger on a key problem, and that is the totality of circumstances and the reputation or the image, and I think common pleas court has a very difficult time in attracting top-level personnel.

But that problem sort of festers on itself, and the real issue is, if we go back to a starting point and restructure the selection process, whether we could do a significantly better job. This was a subject hotly debated in the constitutional convention in December 1967. At that time I advocated merit selection and the appointing process and lifetime tenure for common pleas judges by analogy to the Federal system. And there are some very fine judges on the Philadelphia court of Common Pleas, but I think that the system could be vastly improved. And we do have the parallel system of Federal selection to go to.

And I am interested in your evaluation as to whether that wouldn't at least be an improvement, although not necessarily a perfect system.

Judge SAVITT. Well, I would suggest that we are sort of going round and round. I am not in disagreement with you at all. What I am really saying is, I would be willing to try anything; we certainly can improve the selection process. What I am suggesting is, I am really not sure from my experience if what we will get will really be better.

Senator SPECTER. Judge Savitt, let me come to a next point which is on my question list, then I will come back to this; this is directly related to selection of judges—and that is the utilization of the individual judge calendar, which you and I have talked about personally. It is a system which has been utilized far and wide; it attaches responsibility to the judges for a completion of the case; it really eliminates the issue of judge shopping. And, as you have addressed your remarks in a carefully and excellently prepared statement, reading between the lines here and there, as you describe the judges who were selected for the Saturday program or the judges who were selected for the list program—and I understand the process: those are judges who are acceptable to the lawyers and really the defense bar, so the demands for jury trial are not made.

But the preliminary question is, isn't judge shopping still an enormous problem in the Philadelphia criminal courts?

Judge SAVITT. I do want to respond to individual calendaring—and I do agree with you we ought to have it. I do not think that judge shopping is a particular problem today. We have our list room set up; we have it set up that cases, when they go into the list room, go into the judges without the lawyer having any say in the selection procedure. When a case is continued, it goes back into that same room.

Senator SPECTER. Same judge?

Judge SAVITT. Same judge. And every deputy court administrator has been instructed not to deviate from this policy. There is judge shopping to the extent—if you waive, you get into the program. But once you get into the program, you stay with the judge.

Now, I am not naive enough, having practiced law in Philadelphia as you have, to believe that our defense lawyers aren't going

to be seeking and finding a method to some times get before the judge that they want. So some of it does exist. And I agree with you, an individual calendar would eliminate it.

What I am really saying is I don't think the problem is as glaring as it once was. We are addressing it. But I think it can be totally eliminated by an individual calendar.

Senator SPECTER. Judge Savitt, when a case is in the calendar room, as you have described it, and it is continued——

Judge SAVITT. In the list room, you mean?

Senator SPECTER. In the list room, yes. That judge does not sit in that list room all the time; he is rotated.

Judge SAVITT. No, he sits in the same list room; for a 6-month period, except for his chambers week, he is in that room, and if that case is——

Senator SPECTER. And how about during his chambers week.

Judge SAVITT. Well, during his chambers week, it goes to someone else. But our staff personnel are instructed to avoid that where possible, and they assign the cases in the same room with the same judge, so there is a very strong effort made to avoid judge shopping. I think we are somewhat successful; I don't think we are completely successful.

By the way, judge shopping in certain senses is good.

Senator SPECTER. In what sense?

Judge SAVITT. I think where both counsel want a certain judge, I don't think there is anything inappropriate about giving that judge to counsel. I was the homicide counter judge, and the district attorney and defense counsel would both come in, representing their interests in an advocacy proceeding, and say we would like this case assigned to so and so before we can waive or before whom we can plead. And I am not so certain that that is an inappropriate way to do things.

On the civil side particularly, many times both counsel request assignment to a particular judge, and where we can do that we accommodate that. So I don't know—judge shopping, as I see it, where it is inappropriate, is where it is done ex parte, where it is done sneakily, where it is done to the disadvantage of the litigants and without the other side knowing about it.

Could I respond more fully to individual calendaring?

Senator SPECTER. By all means.

Judge SAVITT. Because I know that is on your mind, Senator.

I think to the fullest extent possible we ought to have a system of individual calendaring for all judges, no quarrel. My experience leads me to believe that this will not only provide the judges with the strongest motivation and personal satisfaction, but will be the most efficient way to process cases. The judge gets on with the case early on, he can keep track of its progress, consolidate intermediate proceedings, discourage dilatory ones, and move the case forward. It minimizes judge shopping, as you said.

Now, historically, we have limited individual calendaring system in the civil and criminal calendar programs, and our problem with an individual calendar, Senator, has been facilities. But I think that our recent changes in staff, the fact that we have moved forward more with computerization, I think if we restructure the court and have a separate—the trial division, and divide it into a

criminal division and civil division, I think we can move forward and do some individual calendaring. I expected to certainly experiment with that.

I have one other thing I want to talk about.

Senator SPECTER. Sure.

Judge SAVITT. I want to talk about an autonomous and specially trained court administrator. That is, I think, important in terms of how courts are run. It's a new science really. And as court——

Senator SPECTER. The administrator being from one of the Pennsylvania courts?

Judge SAVITT. Pardon me? Should the administrator be a judge?

Senator SPECTER. Or a justice.

Judge SAVITT. Not necessarily. I think that—the important thing is that there be an autonomous court administrator. The complexities of running a large urban court system require knowledge of new technology and new techniques which only a specially trained professional court administrator can bring. To function effectively, the court administrator should be independent, have total control over all administrative court business, except the assignment of cases and judges. Other than that I think the court administrator ought to be autonomous.

Senator SPECTER. Well, who should make the assignment? Isn't that the central issue?

Judge SAVITT. I think that there it is a judicial function and the president judge and the administrative judges can assign judges and cases. Other than that, the court administrator should have full control. I suggest he be hired pursuant to a contract for a specified period, just as a manager of a ball team is hired.

Senator SPECTER. Who would select him?

Judge SAVITT. I think he should be selected by the board of judges through the president judge, and be hired and make periodic reports to the court and the public, be subject—if he isn't doing his job to the satisfaction of the court, he can be dismissed; he operates with a contract; he makes reports to the public; he has autonomy over all nonjudicial matters, and he has certain specific professional skills and training.

Now, I have to say this, too, because I don't think a professional court administrator can or should really refrain from political involvement.

Senator SPECTER. You say he should not have——

Judge SAVITT. He cannot; he must, even though he has autonomy, he must be politically involved. It's naive and unreasonable to say that you can operate a court without some political involvement. Now, judges are constitutionally created, and I think to assume that they can exist devoid of politics is unwarranted. As long as they are selected in the political process, where they seek initial election on party lines and then run for retention, they can't be totally removed from politics.

Senator SPECTER. Judge Savitt, that's the whole question. Is the U.S. Supreme Court politically involved? I suggest to you that they are not.

Judge SAVITT. Hear me out, though, Senator. I am not talking about judges in their judicial function. I am talking about the court administrator and the administration of the court.

Let me put it this way. In our court, the managing director of the city of Philadelphia gives us space and services. We must deal with him. The city council and the State legislature fund us. The sheriff and the court recorder sessions serve us operationally. The district attorney and the State attorney general work with us intimately. The city solicitor is our counsel, the city controller is our auditor. We have to seek funding from the Federal Government; we have to deal with the defender association, the bar association, and various civic and business groups. Now, politics isn't exempt from any of these relationships.

We simply can't say I don't want to deal with you, Mr. Mayor, Mr. Managing Director, Mr. District Attorney, when you make a recommendation concerning who should be hired on the court and who should be promoted. I would like to say that I have received thousands of letters, thousands of letters, from judges, councilmen, legislators, U.S. Senators, Congressmen, everybody wants to promote someone and——

Senator SPECTER. None for me, Judge Savitt.

Judge SAVITT. I don't recollect any, Senator.

Senator SPECTER. I recollect none, actively.

Judge SAVITT. All right.

But there have been—now, these requests are——

Senator SPECTER. But how can you maintain really judicial impartiality, approaching judicial purity, if you are going to do business with all of those political favoritism requests?

Judge SAVITT. Well, first, you don't do business with them; you treat them courteously; you accept them for what they are worth; you have job specifications that are rigidly adhered to, and so within the framework of your system, you—so that the integrity of your system isn't in any way infringed upon. And I am not suggesting that individual judges should re-respond to this. I am talking now specifically in terms of a professional court administrator, or of an autonomous court administrator, who is specially trained, and I am not suggesting that he should be a political animal; but what I am suggesting is that to say he is going to be completely divorced from it isn't being realistic. I think what he has to do is be the kind of person who can be aware of the political setting in which the court operates and be able to function within it.

Politics, we are all involved in it in various degrees when you run for political office, and I don't find it offensive. I do find it offensive if any judge would render any decision based on anything other than the facts in front of him; but the administration of a court is intricately involved in the political system, and I think an independent administrator ought to exist who has some sophistication and can realistically deal with this.

Senator SPECTER. Why should that be so?

In the administration of the Supreme Court of the United States, the building across the street, there is a professional administrator who I believe has none of the contacts and none of the problems which you have just described.

Why shouldn't that be equally available to a court of common pleas in a city like Philadelphia?

Judge SAVITT. Well, because in the city of Philadelphia, we—the Supreme Court of the United States is dealing in that beautiful

building over there—with a minimal number of employees, I guess, in terms of the operation that they have. We are dealing with 120 some judges, with close to 2,000 employees, with code enforcement cases, with traffic violation cases, with minor misdemeanors, with numbers writers, with prostitution, with inadequate facilities, inadequate funding——

Senator SPECTER. But their problems are no less complex than yours, and Chief Justice Berger is complaining consistently about inadequate space, inadequate facilities, shortage of personnel.

Judge SAVITT. All right. Let me ask you this, Senator: Do you think a U.S. Senator asked a justice of the Supreme Court—and recommends a law clerk be hired?

Senator SPECTER. No.

Judge SAVITT. Would that be inappropriate or something that—undone—or not done? Who recommends the law clerks to the U.S. Supreme Court?

Senator SPECTER. They are recommended by the deans of the top law schools and it is a very highly competitive system, with the top 1 percent of the top law schools qualifying even for interviews. I think there is not an ounce of politics in it.

Judge SAVITT. Where do they get their clerk-typists?

Senator SPECTER. I have enough trouble telling you where I get my own clerk-typists. I can't answer it.

Judge SAVITT. I am not trying to be rude in any way; you understand that.

Senator SPECTER. Oh, I know that.

Judge SAVITT. I mean, I—to me, I want to avoid the political involvement from the top of my head to the bottom of my toes.

Senator SPECTER. But when you start off with elective judges——

Judge SAVITT. Umm-hmm.

Senator SPECTER [continuing]. Judges who are selected for primaries in the political caucuses, don't you necessarily get the common pleas court involved in politics in a way that it just can't get out of it?

Judge SAVITT. To a degree. But the other point is what I said. Don't forget, you have to do some other things.

When we have to go hat in hand to the State legislature begging for a pay raise; when we have to go hat in hand to the city council to park our cars in the garage——

Senator SPECTER. How about *Carroll* v. *Tate?*

Judge SAVITT. Well, *Carroll* v. *Tate*——

Senator SPECTER. You can go complaint in hand.

Judge SAVITT. Well, that's one—when—you can mandamus funds for the operation of the court, but we have to go through a good deal of other efforts before we get to that point and that would only be, I think, where the operation of the court itself is in jeopardy.

But where the court wants to have judges park cars in the underground garage, or when the court wants to have another space available in city hall, or when the court wants to deal with the district attorney on certain matters involving the business of the court, and when the comptroller audits us and we need the city solicitor who is our lawyer, we just can't take these people and squinch them up like a washrag and throw them in the corner.

And that is the problem that we are confronted with, and I agree with you, if we could extricate this court from all politics; if I could operate the court of common pleas like I would operate an auto it would be a much different operation. I could then simply deal with it without respect to anything else except No. 1, what has to be done for the court, without any other consideration, and strictly deal with each particular job and each particular person.

Now, I do that——

Senator SPECTER. Why can't you do that?

Judge SAVITT. I do that, but I cannot avoid dealings with and relations with political people who are involved in the everyday operation of the court without giving them at least some consideration and respect; and I don't know that that is necessarily wrong, and I don't know that it is necessarily something that can be completely avoided.

I think taking——

Senator SPECTER. Judge, consideration and respect is not inappropriate political involvement.

Judge SAVITT. With respect to the appointment of judges, that could be good because that would eliminate judges themselves from the political arena. There is a difference here between judges and administration of the court.

Senator SPECTER. Well, that is the first place to start.

Judge Savitt, your statement is very profound, very detailed and very much appreciated; and the questions which we have begun to cover are very important.

The issue of the controversy between the common pleas court and the State supreme court has been one which has been very much in the media, and that has brought into a sharp focus a great deal of public attention on the court of common pleas and that is why we had hoped to have Justice Flaherty here today.

What is the nature of that controversy? Why has Justice Flaherty been so critical of the operation of the court of common pleas in terms of his characterization of inefficiency and patronage, and what are the facts as you see them?

Judge SAVITT. I have no idea as to why he is so critical. I have not spoken with him. I have no idea. I have not seen in writing anything that sets forth anything that is wrong with the operation of the court, any—I have received no suggestions, no criticism from Justice Flaherty or anyone else.

Senator SPECTER. Has there been any meeting arranged between any personnel from the State supreme court which has overall supervision, and anybody in the president judge's office or your office which has the day-to-day operational responsibility for the court?

Judge SAVITT. We meet frequently with Justice McDermott, with Justice Nix, with Judge Barbieri, the State court administration, and with the chief justice. Judge Bradley and I meet with them; the district attorney has been present at these meetings——

Senator SPECTER. But you have never met with Justice Flaherty?

Judge SAVITT. I have met with Justice Flaherty since February 9, 1982, when he was granted this order of the supreme court. I don't know really why that order was granted; I have some ideas why. I——

Senator SPECTER. What are your ideas?

Judge SAVITT. Well, I think that the chief justice perceived that there were some problems in the court, and he thought it might be a good idea to have someone review it and make an inquiry concerning the court. I don't think it was necessary to even do that. I think we had been working with the chief justice, with the supreme court, with the criminal justice coordinating commission, and solving our problems.

However, let it be understood clearly: I welcome any inquiry, any scrutiny, any person at all can come into this court as it is operated now; it is open, and I don't suggest it is perfect. I don't even suggest that it is run as efficiently as it might be. But I suggest and tell you without fear of contradiction that everything is being done to do it as well as we can with the existing circumstance, and I am crying out for help, crying out for people to come in and offer suggestions. What I don't want is acrimony.

Senator SPECTER. Have you or Judge Bradley met with Chief Justice O'Brien on this subject?

Judge SAVITT. We have met with Chief Justice O'Brien several times.

Senator SPECTER. And you have met with Justice Nix?

Judge SAVITT. Justice Nix?

Senator SPECTER. And Justice McDermott?

Judge SAVITT. Yes.

Senator SPECTER. But you have not met with Justice Flaherty?

Judge SAVITT. No.

By the way, I always would have been willing to meet with Justice Flaherty. Justice Flaherty was always welcome in my office, is always welcome in my office, the office will be open to him. Everything is open to any responsible request.

Senator SPECTER. Did Justice Flaherty ever make any initiative to meet with Judge Bradley or with you?

Judge SAVITT. No; he did not.

Senator SPECTER. Did either you or Justice Bradley take any initiative to meet with Justice Flaherty?

Judge SAVITT. No, we did not.

Senator SPECTER. So your communication has been via the media and the newspapers?

Judge SAVITT. Isn't it awful, Senator?

Senator SPECTER. That is correct. That is exactly right.

Judge SAVITT. All I have done——

Senator SPECTER. So I know as much about that controversy as you do, having subscribed to all the relevant newspapers?

Judge SAVITT. I would suggest that you probably know more. I don't know, there may be people who talk to you about it that won't talk to me. I know that I have done nothing except operate this court to the best of my ability and to seek aid, help, advice wherever we can get it. It is disheartening; it is upsetting to have been in the midst of this type of controversy. It has been personally demeaning to me. I worked all my life to try and do what I believe is right and proper and suffered through a lot to keep this job, and what I am trying to do is the right thing.

Now, I concede, Senator Specter, that what I do isn't always perfect, and someone might be able to do it better. But that is nothing that I have ever done or will do that isn't in the best interests of

the public, and it did not deserve, and nothing in the common pleas court deserves, the type of criticism that it has been receiving lately; and it is very, very upsetting and serves no public benefit.

Senator SPECTER. Judge Savitt, I can personally attest to your high integrity and your high ability. I have been your colleague for better than 20 years, and I know how devoted you are to the job. I do that from a landmark argument we had in *Commonwealth* v. *Bursergi* some 20 years ago this year, and I know how hard you are working at it, and this committee and the Congress want to be helpful to the extent that we can be; and it seemed to me that we could shed some light, and we can, I think provide some help on this issue of calendar control.

The days of no money at the Federal level are not going to be with us forever, and we have to look ahead to this problem of crime control, and we have to devise programs and systems which can be put into operation, and it is a long-term program, and we are determined to do just that.

Judge SAVITT. Thank you very much. I——

Senator SPECTER. Judge Savitt, why don't you stay as a panel, and I would like to call at this time Judge Cipriani and Judge Takiff together.

In my experience, you are the longest witness on any Judiciary Committee meeting I have attended.

Judge SAVITT. Is that good or bad?

Senator SPECTER. I would say it is exemplary; I would say it is very good.

[The prepared statement of Judge Savitt follows:]

PREPARED STATEMENT OF JUDGE DAVID N. SAVITT

I. DESCRIPTION OF THE PHILADELPHIA COURT SYSTEM

The Philadelphia judicial system is composed of two courts: Court of Common Pleas, which has general trial jurisdiction; and Municipal Court, which shares jurisdiction with the Court of Common Pleas in criminal matters involving a potential maximum sentence of five years or less and in civil matters in which the amount in controversy is $1000 or less. A separate Traffic Court has jurisdiction over noncriminal traffic mateers.

There are 81 Common Pleas Judges, 22 Municipal Court Judges and 17 Retired Judges who serve part time with the Court. The Common Pleas Court is divided into three divisions: the Family Court Division, Orphans' Court Division, and Trial Division. As presently constituted, the Trial Division Judges hear both criminal and civil matters, with 43 Judges assigned to criminal cases and 23 Judges assigned to civil matters. Common Pleas and Municipal Court Judges combined annually handle close to 70,000 criminal cases, over 100,000 civil cases, more than 50,000 Family Court matters, and another 6,700 Orphans' Court matters.

Criminal case processing in Philadelphia can be described as a two-tiered system. The lower court, or Municipal Court, disposes of cases involving the less serious crimes and screens serious criminal cases for the Court of Common Pleas. All criminal cases commence in Municipal Court, which conducts all preliminary arraignments and preliminary hearings for persons arrested and charged with a criminal offense. In 1981, the Municipal Court conducted approximately 45,000 preliminary arraignments and 16,000 preliminary hearings for cases which carry maximum sentences of more than five years. Criminal cases within the jurisdiction of the Municipal Court go directly from pre-

liminary arraignment to trial listing, usually in little more than 40 days. In those cases, there is no preliminary hearing nor is there a provision for a jury trial.

In 1981 the Municipal Court disposed of approximately 23,000 such cases. Because an individual is not afforded the opportunity for a jury trial in Municipal Court, he is guaranteed a trial de novo, the right of appeal to Common Pleas Court, where he is entitled to a completely new trial with a jury, if he so desires. During 1981 there were 466 appeals on Municipal Court criminal trials, which is only 7 percent of all persons found guilty in Municipal Court. [The two-tiered system has its critics who argue that the de novo appeal gives some defendants an unfair second chance and needlessly results in duplication. Yet the fact that a large number of criminal misdemeanors are handled efficiently, without preliminary hearing and only a small percentage are appealed is the system's best defense.]

Cases held for trial at the preliminary hearing as well as appeals from Municipal Court become the jurisdiction of the Trial Division of the Court of Common Pleas. Common Pleas Judges assigned to criminal cases disposed of 9,475 cases in 1981. These cases are virtually all felonies including over 300 homicide cases.

Criminal trials in the Court of Common Pleas are assigned to one of three programs. The Homicide program, as its name indicates, handles all cases in which the defendant is accused of a felonious homicide. The Criminal Calendar program hears all cases (other than homicides) which the Court believes will involve substantial legal problems, complexity of preparation, multiple defendants or a large number of witnesses. All cases in which a jury trial has been requested and all cases involving rape or arson also are assigned to the Calendar program. All other Common Pleas criminal trials are assigned to the Criminal List Program, where there is no provision for a jury trial.

In both the Homicide program and the Calendar program there is a calendar judge who is responsible for overseeing pretrial

matters and forwarding cases which are ready for trial to the judges within the programs. List Program judges work independently and dispose of 4 or 5 cases per day from a list which is prepared by court administrative staff with the aid of computer information.

Civil Trials in Philadelphia in which the amount in controversy is more than $1,000 are heard in the Court of Common Pleas. Those in which the amount in controversy is $1,000 or less are tried before a judge without a jury in the Small Claims Division of Municipal Court, as are Landlord and Tenant matters. Appeals from verdicts in Small Claims Court are heard in the Court of Common Pleas.

Common Pleas Court civil cases in which the contested amount is between $1,000 and $20,000 are, with the specfic exception of those involving real estate or equity matters, heard bv a court appointed panel of three lawyer arbitrators, whose findings have the same force and effect as a court decision.

Findings of the arbitrators are appealable to the Court of Common Pleas and are assigned to the General Trial list, which also includes all cases which, because of substantive or procedural legal principle, may not be submitted to arbitration. The General list is divided into a Jury and Non-Jury list and Equity matters are, by reason of law, assigned to the latter. Civil actions involving more than $20,000 which are not otherwise barred by law or procedure as above described, are assigned for trial to the Major Case list.

The Criminal case processing system which I have described is extremely complex and difficult to administer because of the enormous volume of cases involved. It is a system which has evolved as a response to overwhelming problems in the face of increasing crime and more serious crimes in the 60's, this coupled with a shortage of judges and courtrooms caused the development of this system. In 1964 six new Common Pleas judgeships were authorized by the State legislature. This was the first increase in Philadelphia sicne 1937. It was not until 1972, however, that the shortage of judges was remedied by authorization of an additional 25 Common Pleas Court judges.

II. PROBLEMS INHERENT IN THE OPERATION OF LARGE URBAN COURTS

There are a number of problems inherent in administering our courts which I expect are not unique to Philadelphia. Time and again as these hearings continue, you will probably hear other judges and administrators describe similar problems:

BUDGETARY CONSTRAINTS

At the root of many of the most serious problems confronting the urban judiciary which I will discuss is inadequate funding. Major urban courts receive far less than adequate funding to properly function, and without sufficient funds, judicial reforms cannot be fully implemented. The allocation of money is out of proportion to the volume of work courts are expected to perform. Now, this is due in part to the general financial problems of large cities, but is also due to a reluctance on the part of government officials to adequately fund the criminal justice system. With resources dwindling and criminal case volume increasing, the courts must resort to practical expediencies in order to keep abreast.

CASELOAD INCREASE

Following national trends, the volume of criminal cases and civil litigation in Philadelphia continues to increase numerically and in complexity. During the past two years, the volume of new criminal cases has increased by approximately 25 percent a year. That is an enormous increase, Senator. On the civil side, additionally, there has been a proliferation of litigation of an increasingly complex nature.

INCREASE IN DEMANDS FOR JURY TRIALS

A related problem which we face in Philadelphia, and perhaps elsewhere, is an increase in the demand for jury trials. This phenomenon, which has occurred on the civil side in asbestos cases and on the criminal side as a result of changing sentencing practices, threatens to undermine the structure of the justice system.

In Philadelphia in the criminal list room program, there are presently eight judges assigned for non-jury cases before whom defense counsel and district attorney will waive a jury trial.

Disposing of 4-5 cases per day in this program, we were able to adjudicate 4,963 cases in the first six months of 1982. In fact, only 271, or four percent of over 7,000 criminal cases disposed between January and June of this year required jury trials. This is even an increase in the number of jury trials held last year. Thus, it is obvious that the smooth operation of our justice system in Philadelphia, like many other large cities, depends upon the limited use of jury trials.

The continued operation of these procedures, however, is in jeopardy because of the imposition of the Statewide Sentencing Guidelines effective for cases committed after July 23rd and Mandatory Sentencing for certain crimes committed after June 6th, 1982. Based on analysis of 1981 dispositions which would fit the Mandatory Sentencing categories, it is evident that such cases have not traditionally been tried by juries in Philadelphia. The problem is particularly acute in Philadelphia because the District Attorney has indicated his intention not to engage in charge bargaining. Should this policy continue there will be no advantage whatsoever for any defendant to waive a jury trial in this type of case.

LACK OF ADEQUATE COURT FACILITIES

It is also not uncommon to find inadequate court facilities in large urban areas. Philadelphia has an inadequate, inefficient and unsafe court building. In fact, we don't even have a courthouse, but are tenants in Philadelphia's City Hall, which combines the functions of a City Hall and County Courthouse in a building whose structure was begun in 1872 and which was only designed for 21 judges. A recent study of all courthouses in Pennsylvania commissioned by the Supreme Court of Pennsylvania, found the City Hall facility inefficient, inadequate, inappropriate and unsafe. Among the many problems noted by this study, especially noteworthy are the problems of security of judges, witnesses, defendants, staff and the general public in the courtrooms, corridors and elevators. [1] The transportation of defendants from the Detention Center in Northeast Philadelphia to Center City

court facilities creates frequent trial delays. Because we have outgrown these facilities, unsuited as they are, a number of units of the court, including non-criminal courtrooms are spread out in many locations outside City Hall, resulting in duplication and lost time as judges and support personnel travel from one location to another.

Although City Hall has its security problems, it is the only facility which has cell space for the temporary holding of adult detentioners needed in court. It has therefore been necessary to use all courtroom facilities in City Hall for criminal matters. While over the years renovations have made it possible to open new courtrooms in City Hall, the limit of usable space has now been reached. Thus, any new court facilities opened to meet the projected press of jury cases resulting from Mandatory Sentencing will have to be located outside City Hall, creating new problems of security, prisoner transportation, and duplication of services.

LIMITED DEFENSE BAR

There are a limited number of defense attorneys in urban areas, largely because there are other, more lucrative, less stressful ways to practice law. In Philadelphia, the size of the private defense bar has dropped, so that the demands on individual attorneys practicing criminal law have increased. The process of scheduling cases involving these attorneys, who often have criminal matters scheduled in Federal Court, or in surrounding counties as well as in our courts is time-consuming. This often results in an undesirable number of continuances in spite of procedural rules and policies designed to control them.

III. PHILADELPHIA ACCOMPLISHMENTS

In all likelihood, the Courts in Philadelphia are experiencing the same problems which confront other courts nationwide. We have taken the following action to resolve our local problems:

REDUCTION OF INVENTORY AND INCREASE IN DISPOSITIONS

In the first six months of 1982, the inventory of criminal cases awaiting adjudication has been reduced by 25 percent from

5,182 to 3,883. This represents approximately 3 months work in our Philadelphia Common Pleas Court where we averaged 1,200 case dispositions per month in the first 6 months of this year.

With respect to criminal cases, in Pennsylvania, under Rule 1100 of the Rules of Criminal Procedure, the Commonwealth has 180 days from the issuance of a complaint to bring a case to trial. With our current inventory of 3,900 cases it would take approximately 100 days in Common Pleas Court to resolve this number of cases. If we add another 40 days in Municipal Court for preliminary hearing we would have an average of 140 days for a case to be disposed. While this does not take into consideration a multitude of legitimate reasons which may result in a case being continued, and therefore taking longer to be disposed, the important point is that we do not have cases sitting around in a backlog, but rather progressing through in an orderly and timely fashion.

Common Pleas Judges in the Criminal Program adjudicated a record number of 7,025 criminal cases in the first six months of 1982. This is the largest ever for a six month period since the Philadelphia Court system was consolidated in 1969 and 42 percent greater than the first half of 1981. The inventory of pending cases is presently at a manageable level largely because of new procedures which the Court instituted. These include a new Continuance Rule promulgated February 1, 1982 which strictly limits the grounds upon which continuance may be granted; longer court hours; and a special Saturday Court program. The Saturday Court program merits special recognition since, in its twenty Saturdays of operation, 391 felony cases were tried. The use of two additional City Hall courtrooms, built by court personnel and opened in January, also contributed to the increase in case dispositions. To insure that progress continues, the criminal courts are remaining open all summer.

NEW ARBITRATION CENTER

In February, 1982, a new Arbitration Center was opened. Now fully operational, this center has made the expedited resolution

of many cases possible, and has effected a savings to the City of approximately Five Hundred Thousand Dollars ($500,000) annually in arbitrator's fees. Arbitration cases are now given a date at the Arbitration Center 8 months from the time civil action is commenced. This Center has received acclaim from the Bar, the public and Chief Justice Warren Burger, who sent a personal representative to inspect it as a model for arbitration programs nationwide.

CIVIL MOTIONS REORGANIZATION

In January, 1982, Civil Motion Court was reorganized. Two judges were assigned full-time to review Civil Motions, replacing a system where motions were distributed to all judges in the Trial Division, both Civil and Criminal. Both Motion Judges now receive an equal number of motions per day including contested, uncontested and all preliminary matters. This new Motion Court policy was adopted to better serve the public and the Bar as well as discourage the filing of frivolous and dilatory motions. As a result, effective July, 1982, the Civil Motion Court list is current. Since motions are decided promptly, the trial of civil cases is expedited.

MANAGEMENT REVIEW OF PROTHONOTARY'S OFFICE

The President Judge and I have recently taken action to engage a Management consultant to review the operations of the Prothonotary's Office. This office, which has its origins in antiquity and is currently overwhelmed with the volume and variety of civil paperwork requires a professional review of its accounting and operational procedures. As a result of this management study we expect to institute necessary changes to ensure efficient operation of this key office. In addition, effective September 1, all docketing procedures in the Prothonotary's Office will be fully computerized, replacing out-moded manual operations.

FISCAL REORGANIZATION/REDUCTION IN COURT'S BUDGET

During this past year, the Court's Fiscal Unit was reorganized and streamlined. By implementing new procedures, tighter restraints were placed upon the usage of overtime and a new strict

purchasing procedure was implemented for purchasing supplies, materials and equipment.

A hiring freeze was enforced from February 1982 through the end of June 1982. In fact, the number of employees on the Court's General Fund Budget has been reduced and promotions are being strictly limited. At present, I am directing a review of each unit within the Court to determine where jobs can be eliminated and positions terminated. Because of the 5% decrease in the Court's budget for fiscal year 1983, certain units and positions have been abolished. All of this has been done in spite of the enormous increase in court dispositions and related work.

PARTICIPATION IN CRIMINAL JUSTICE COORDINATING COMMISSION

There are a number of problems inherent in the operation of the courts which result from the constitutional separation of powers. A court administrator must orchestrate the various parties involved in the justice process while not upsetting the delicate balance which our system of jurisprudence requires.

In Philadelphia, the President Judge and I are assisted in this by the Criminal Justice Coordinating Commission, on which I serve as a member of the Executive Committee. This group, which is comprised of the heads of criminal justice agencies, a cross-section of local public officials and other appointed community members, meets regularly to discuss timely problems confronting the criminal justice system. Examples of recent projects undertaken by this group include trial delay reduction, prison overcrowding reduction, court security and efficient prisoner transportation. In each case, commission staff, with the help and cooperation of individual agency personnel, study the problem, make recommendations, and assist in implementation of solutions, even to the point of helping to find funds when necessary.

This Commission is unique in that it provides a forum for the regular exchange of ideas and discussion of problems among the otherwise autonomous independently elected officials and agency heads. It is this Commission which offers the best hope that

criminal justice agencies in Philadelphia can work cooperatively together and with other local officials to resolve our problems. I strongly recommend this concept to other large urban centers.

IV. RECOMMENDATIONS

My discussion has thus far focused on the problems of Court Administration in urban areas. I should now like to propose some short-term and long range recommendations to confront these problems. While these are specific to Philadelphia I suspect that our problems are not unique and therefore solutions have some applicability in other large cities.

SHORT-TERM

IMPLEMENTATION OF MANDATORY SENTENCING LEGISLATION

Steps must be taken immediately to secure the necessary facilities, judges and support personnel to operate additional criminal jury-trial courtrooms. This is essential if we are to keep abreast of our criminal inventory in the face of increased jury trials resulting from Mandatory Sentencing. The cost is estimated at one million dollars annually.

PROFESSIONAL MANAGEMENT OF PERSONNEL AND FISCAL OFFICES

I have recommended to the President Judge that the Court's fiscal and personnel offices be headed by a professional manager with experience in accounting, budgeting, and other financial and personnel matters. This is essential if we are to reach our goal of an efficient and cost-effective court system.

FUNDING FOR CRIMINAL JUSTICE COORDINATING COMMISSION

The Criminal Justice Coordinating Commission needs to be adequately staffed to support its collective members in their efforts to resolve system-wide problems. A special fund should be made available for implementation of the Commission's recommendations.

SHERIFF PERSONNEL

Additional Sheriff personnel and metal detection devices are required to provide for improved security in City Hall courtrooms.

Additional Sheriffs are also needed to provide for timely transportation of prisoners from the Detention Center to City Hall and from the City Hall cellroom to courtrooms.

LONG-TERM

NEW JUSTICE CENTER

A new center city Justice Center is required to consolidate all court related offices, and include at the very least a short-term detention center. Under the auspices of the Criminal Justice Coordinating Commission an extensive planning phase for new or renovated coordinated justice facilities is nearing completion and efforts to secure funding for this center, estimated to cost at least 200 million dollars will soon be underway.

CONSOLIDATE COMMON PLEAS, MUNICIPAL AND TRAFFIC COURTS

Philadelphia Municipal and Traffic Court should be placed under the administrative control of the President Judge of the Philadelphia Court of Common Pleas. This was recommended by the Pomeroy Commission, a 38 member committee to study Pennsylvania's Unified Judiciary System chaired by former Supreme Court Justice Thomas W. Pomeroy, Jr., and would result in a more unified and cost effective administration of all three courts.

ELIMINATION OF ELECTED OFFICES OF CLERK OF COURTS, REGISTER OF WILLS AND SHERIFF

The elected row offices of Clerk of Courts and Register of Wills should be eliminated. These offices should be appointed by the President Judge. This was also recommended by the Pomeroy Commission and is designed to give the Court control over essential court functions.

The elected row office of Sheriff should also be eliminated and the Sheriff too should be appointed by the President Judge. While this restructuring was not recommended by the Pomeroy Commission, experience with problems of court security and prisoner transportation in Philadelphia have led me to conclude that this is another essential court function which requires administrative control by the President Judge.

RESTRUCTURE TRIAL DIVISION

The present trial division of the Court of Common Pleas should be separated into a criminal division and civil division. Each of these two divisions has its own unique problems of administration which separate administrative judges could best address. Such a change would also allow judges to develop special expertise and provide the President Judge with an additional administrative judge to act as counsel with specialized expertise. This recommendation has just been proposed by State Supreme Court Chief Justice Henry X. O'Brien who has asked the state legislature to take the necessary action to approve the restructuring.

INDIVIDUAL CALENDARING SYSTEM

To the fullest extent possible an individual calendaring system should be developed for all judges. My experience has led me to conclude that this system not only provides the judges with the strongest motivation and personal satisfaction, but results in the most efficient processing of cases. Because the judge gets involved in the case early on, he or she can keep track of its progress, consolidating intermediate proceedings and motions, discouraging dilatory ones and moving the case to disposition. Another argument for individual calendaring is that it minimizes the potential for judge shopping. In fact, in Philadelphia, judge shopping is presently restricted and there are times when a modified form of judge shopping is not undesirable.

Historically, we have had limited individual calendaring systems in the civil and criminal calendar programs, but limited facilities have precluded the use of a pure individual calendar system. Recent and proposed changes in staffing and computerization in the structure of the court and in facilities will give us the flexibility to experiment further with individual judge calendars.

AUTONOMOUS AND SPECIALLY TRAINED COURT ADMINISTRATOR

As a Court Administrator and also as a judge of this Court, I strongly believe that the court needs an autonomous Court Administrator. The complexities of running a large urban court system require knowledge of new technology and new techniques which a specially trained professional Court Administrator can bring to the task.

To function effectively, the Court Administrator should be independent and have total control over all administrative court business other than the assignment of cases and judges. I suggest that the Court Administrator be hired pursuant to a contract for a specified period subject to renewal by the court through its President Judge. The Court Administrator should be required to make periodic reports to the court and public. He or she should possess skills specifically oriented to the courts and the legal profession. The Court Administrator need not be a Judge, former Judge or lawyer, but individuals with this background and training should not be precluded.

I want to make it clear, however, that I am not suggesting that a professional Court Administrator can or should refrain from "political" involvement. To the contrary, such a position would be both naive and unreasonable, as he must deal with elected officials in order to function daily. Judges are constitutionally created and to assume that they can exist devoid of all politics is unreal-

istic and unwarranted. As long as judges are selected in the political process where they seek initial election on party lines and then run for retention, they cannot be totally removed from politics.

The Court must look to the Managing Director for space and services, to the City Council and State Legislature for funding, and to the Sheriff and Clerk of Quarter Sessions for operational services. The Court works with the District Attorney and occasionally with the State Attorney General. The City Solicitor is counsel to the court and the City Controller is our auditor. The Court must seek funding from the Federal Government for special programs. The Court Administrator must deal with the Defender Association, the Bar Association and various business and civic groups.

Politics is not exempt in any of these relationships. During my tenure as Court Administrator, I have received thousands of letters from Judges, counsel and others recommending court employees to be hired or promoted. These requests are treated courteously and considered, but only individuals with proper qualifications are hired in accordance with court procedure. Attendance and job performance of all employees is closely monitored.

In order to deal effectively with the daily political requests as well as with the larger problems of inter-agency politics, a Court Administrator must be aware of the political setting in which the court operates and must be able to function effectively within its confines.

STATEMENTS OF JUDGE NICHOLAS A. CIPRIANI, ADMINISTRATOR, PHILADELPHIA FAMILY COURT; AND JUDGE HARRY TAKIFF, ADMINISTRATOR OF ASBESTOS LITIGATION, PHILADELPHIA COURT OF COMMON PLEAS

Senator SPECTER. Judge Cipriani, we welcome you here. I know your background is extensive, since the first Monday in January 1970 when you started sitting in the court of common pleas and you specialize in the family court division; and we are very much in your debt for coming and look forward to your testimony.

Judge CIPRIANI. Thank you, Senator. I appreciate the invitation and am grateful to you for giving me this opportunity.

The family court division of the Philadelphia Court of Common Pleas has taken significant steps in the past year to speed the listing of juvenile delinquency cases. As a result of adopting a date and courtroom certain listing system late last year, we have been able to substantially reduce the time needed to schedule juvenile delinquent cases, provide better notification of hearing dates to the parties involved in a case, increase the time available to the prosecution and defense for preparing cases and reduce continuances.

While each day brings an inventory of cases available for hearing, backlog as it exists in adult criminal court and trial delay are not quite the same problem, this despite an increasing workload as illustrated by the following statistics:

In 1977, there were 9,344 delinquent petitions filed, and in 1981, there were 11,268.

In 1977, there were 1,504 dependent petitions filed; in 1981, there were 2,904.

I might say that recently the city department of public welfare, which is the children and youth agency of our city, contacted me that there were approximately 1,200 children placed with them voluntarily without a court commitment because parents could not provide for the children, and it was necessary for the agency to receive a court commitment in order to be entitled to funds under act 148 of our Commonwealth; and within the last 3 months, we have added to our system over 1,200 cases in dependent court.

Now, insofar as the cases which were disposed of, and this will include new charges and rehearings, to show you the increase in volume, in 1977, there were in the delinquent court, 17,889 cases disposed of; in 1981, there were 18,808. In dependent court, in 1977, cases disposed of were 2,055; in 1981, 11,049.

Senator SPECTER. How many judges do you have, Judge Cipriani, sitting in your division?

Judge CIPRIANI. Our division includes the domestic relations as well as juvenile delinquency and dependent court. We have altogether approximately 16 judges who are sitting.

There are five judges sitting in the delinquent court and we have two judges sitting in the dependent court.

Senator SPECTER. And are you housed entirely at the 1801 building?

Judge CIPRIANI. Not quite entirely, Senator. The bulk of our judges do hear cases at 1801 Vine Street; we have four courtrooms at 1600 Walnut Street. They are cases primarily under the 4-D program and are domestic relations cases. But the juvenile delinquent

and dependent court—dependent cases are heard at 1801 Vine Street.

Now, in the face of the increased delinquency workload, the court has developed a system of progressively screening cases which facilitate the processing of delinquency cases. Here again some statistics may be helpful.

We have the intake interviews; we also have a procedure in Philadelphia known as the pretrial hearing, which is something that was instituted a few years back. It is really a hearing prior to adjudicatory hearing where the judge oftentimes can resolve the matter at that level, and beyond that, of course, is adjudicatory hearing.

In 1981, of the cases that were heard, the intake interviewers disposed of 1,327 cases, or 10 percent, approximately 10 percent. At pretrial, 5,403 cases were disposed of, or 41 percent of the cases. At the pretrial hearing, 41 percent of the cases were disposed of, either by consent decree, and admission, which resulted in some disposition by the court or on occasion a petition may be dismissed or withdrawn.

The balance of the cases, the 48 percent of the cases, totaling 6,453, did go to adjudicatory hearing.

The reduction in cases settled at intake reflects that the body of cases coming into court is of a more serious nature. Less serious matters, such as status offenses and summary offenses, are no longer handled in delinquency court. Studies also underline that the proportion of juvenile cases committing serious offenses has been steadily on the rise at the same time that younger offenders are becoming involved in the more serious crime categories.

The dramatic upsurge in dependency matters is a result of legislation mandating hearings and regular reviews of cases in placement.

In regard to processing time, delinquency cases proceed from intake to pretrial hearing in 3 to 4 weeks. And, from pretrial to adjudicatory hearing, in approximately 4 to 5 weeks. This is close to the minimum time necessary for notification and case preparation. So, cases do go to trial approximately 9 to 10 weeks after intake; however, beyond that point where we will often have delay because of continuances by either side, or where there is a multiple defendant case, and the attorney is engaged elsewhere, and the case cannot go on.

However, the cutback in available funds and budget constraints have resulted in a considerable shortage of professional and clerical staff to adequately handle the current workload. The lack of available clerical and professional staff makes it difficult to service cases received by the court on a timely basis.

Additional probation officers are needed to conduct social investigations, to prepare treatment plans, and to make recommendations to the judges. At the present time we have 104 probation officers; in 1977, we had 125. Notwithstanding the increased workload, we have less probation judges to handle the work.

In addition, more clerical personnel are needed to prepare and update case records, make up court lists, summarize cases for court hearing, and inform probation and other staff of judges' decisions.

Staff is also needed to serve juvenile bench warrants. At present, most warrants issued on juvenile delinquent cases are not served, due to lack of staff. As a result, many juvenile delinquent cases cannot be disposed of.

In cases where a child is committed or placed by the court, Pennsylvania law requires that the committing court review each commitment or placement every 6 months and hold a disposition review hearing at least every 9 months.

In addition, if a child is voluntarily placed with the——

Senator SPECTER. Judge Cipriani, how detailed can those hearings be, given the tremendous volume of your work?

Judge CIPRIANI. I would say they are fairly detailed, Senator. We do have reports from the institution; the hearings do provide an opportunity for the parties to add to the reports and make recommendations.

Now, these matters are not matters that should last long days—many days or hours—but they do, and if we had the adequate staff, the preparation for this hearing is in the background material as much as what may take place in the courtroom.

Now, with regard to children who are placed in care through the department of public welfare, which is our children and youth agency, and if they remain there more than 30 days, there must be a court hearing.

These provisions have resulted in a tremendous increase in the number of dependent cases listed for court hearing, and have placed a considerable burden on the professional and clerical staff.

Although we have been able to increase the number of dependent court listings and sessions, this has been done at the expense of reducing the number of judges hearing other family court matters. Additional professional and clerical staff, judges, and courtrooms, will be needed to list, handle, and dispose of the continually increasing number of dependent cases.

I would like to say at this point, Senator, that I have a study underway with a view to the use of masters in dependent cases and also in domestic relations cases. And, there is also the possibility of the use of masters in a delinquent case. Many counties do.

We have been fortunate in having a pretrial hearing process which has screened out many of the cases, and I believe has been the reason why we have been able to manage these lists so far.

A major problem in the juvenile justice system is one of appropriate disposition, most particularly in the case of the serious offender. The lack of appropriate facilities for the serious delinquent offender impacts negatively on a system in a number of ways.

It is the area in which there is delay, in that it is characterized by searching out some meaningful disposition. The dearth of appropriate dispositional alternatives for this type of juvenile offender also breeds the case that stays in the system, and then becomes an adult offender and recidivist. Replete with a history of arrests in double figures and potpourri of placements of relatively short duration, additionally, such offenders require an inordinate amount of time and effort on the part of staff and institutions not designed for their treatment, or on the part of probation officers, when they are in the probation caseload, to the detriment of the juveniles who belong in these programs.

Two things are lacking in arriving at a solution: money and policy.

Although finding money to establish facilities for the serious juvenile offender is a major problem, the lack of cohesive policy is a far greater stumbling block. The politics of the juvenile justice field polarizes into a group that points out the high percentage of juveniles committing the most serious crimes, and hence the need for a vast increase in institutional beds for them——

Senator SPECTER. Judge Cipriani, what do you mean there, by your use of the words "the politics" of the juvenile justice system is polarizing——

Judge CIPRIANI. The word "politics" is not the partisan sense, but those who are the advocates for these fields. It is not in a partisan sense, Senator.

Senator SPECTER. I see.

Judge CIPRIANI. Then there is the group that preclaims that virtually no juvenile requires secure custody. Neither side yields or opts for a realistic solution. Immobilization is the result.

As the issue remains unsolved, program planning is impossible, and the end result is a vacuum of treatment under juvenile justice auspices, and increasing numbers of juveniles certified to the adult system.

Now, our family court has worked to fill the gap in dispositional alternatives by conceptualizing its own programs to meet specialized needs of its changes. And I have listed some in my prepared report, and I will not go through that entirely, Senator, in the interest of time; but we have established the office of special services, which is staffed by professionals who are able to recruit volunteers in the community to aid juveniles.

We have the counseling and referring service, which is a diversionary process whereby children with problems could be referred to that agency and, hopefully, meet some of their needs, and need not come into court.

We have the intensive probation unit, which provides for intensive probationary services for children who are on probation when we think closer supervision is needed.

Senator SPECTER. Judge Cipriani, do any of these programs operate in a similar way to the ARD program to divert juveniles from the system without the more extensive hearings in juvenile court?

Judge CIPRIANI. We do not have a similar program to ARD except the consent decree, Senator, because ARD is a dispositional program. Some of these—correction and counseling and referral service is a diversionary program often used before a youngster comes into court, but the consent decree would be the closest to the ARD program where a juvenile is on probation for a period of approximately 6 months, and if a child performs well then the matter is terminated at that point.

Senator SPECTER. Judge Cipriani, while not directly on the issue of calendar control, we have had extensive hearings on the subject of career criminals and their origin at the juvenile stage, and an effort has been made by this subcommittee and many others to identify the juvenile offender at an early stage to try to determine where the chain could be broken, as the pattern emerges where a child is a delinquent at 8 or 9 and guilty of minor theft at 10 or 11

and burglary of abandoned houses at 12 or 13, and then graduating to armed robbery at 15, and robbery-murder at 17.

Based on your extensive experience in this field, do you have any special insight to offer the subcommittee on how to identify the juvenile in that track where we might be able to extricate him from the criminal cycle?

Judge CIPRIANI. I think that is one that concerns most of us, but I do not believe that I have the expertise as such. The only thing I do say, Senator, is this: I believe we have to look at these youngsters right from the beginning; I believe we have to start when we see truancy, and I think truancy, in my opinion, is a very serious symptom, not in itself—many of us have cut classes, maybe you have not, Senator, but I did, the statute of limitations has run on me so I will admit to it—but what I want to say is truancy is a symptom similar to a sore throat, and it may be something that passes overnight or it may be the beginning of something very serious. And I believe that we should start with truancy. When we see youngsters who are truant, missing many days, I believe we should check the reason why. And while people will say truancy has no relationship to delinquency—and I agree with that—yet every serious delinquent did have the symptom of truancy, which means there we should start and there we should see why the behavior pattern begins.

I might say, Senator, that I have called a meeting with the school board—we are going to start in September, we are going to zero in on the truancy problem. I am very happy to tell you that the district attorney's office is also concerned. Mr. Harry Tischler who is the deputy in charge in juvenile court, is very concerned with this, with children at the early age—not the 9th and 10th graders, because at that point we have almost lost them, but children when they become truant at the 4th-, 5th-, and 6th-grade levels, to see if we can't change behavior patterns lest they go into more serious offenses.

Now, in terms of symptoms, when we can tell one who is bad or not, I don't think anybody can really use a yardstick. I think when you deal with human behavior, I think experience is perhaps your best yardstick. I do believe that we have to evaluate to the best of our ability, I do believe that we have to take the advice of all of the professionals—the psychiatrists, the psychologists, the social workers, probation people—as to what they think the reasonable risk of a juvenile is. But once that juvenile has let us down, I think at that point we have to stop saying that we can treat him and rehabilitate him. I think experience is the best teacher.

Senator SPECTER. What's that point, Judge Cipriani? At what point do we have to get tougher on the juvenile offender?

Judge CIPRIANI. I don't think in human behavior you can use the yardstick of second offense or third offense; I think each one has to be measured in its own case and by its own particular circumstances. I do believe that one thing we are paying a price for—we are paying a price for permissiveness in our society, we are paying a price for the people who are well-intentioned, who said no juvenile should be institutionalized—and I remember the TV shows on channel 3 in Philadelphia where judges were made to be considered ogres because they were committing children in the early 1970's,

and now the thrust is that we are horrible judges because we are not committing more children. I think that either extreme is not the correct one; I think we have to recognize that a small number of hard-core juveniles, the antisocial individual, the psychopath, must be removed from society for the protection of the public. I believe that. And I believe that we need good, secure facilities, structured programs—not warehousing them, programs where they will be given structured treatment, where there will be discipline, humane discipline, proper discipline, with a view to changing behavior patterns. And I think that that is where we should be going and not say juveniles are juveniles and, you know, we must recognize that, because I think there is a hard core who must be removed from society.

But in talking about that small group, we must remember we are dealing with thousands of others who can be treated and rehabilitated in the system. And I would hate to see that large group who can be treated thrown away because of our unhappiness—and just unhappiness with the persons who are committing the violent and serious offenses.

You know, Senator, I was mugged in the city hall courtyard, so I experienced it, and I have no——

Senator SPECTER. By a juvenile?

Judge CIPRIANI. Well, Senator, I couldn't say; I would say a young offender, anywhere from 17 to 21.

Senator SPECTER. How did the district attorney handle that case?

Judge CIPRIANI. Unfortunately, they never caught them, and it's no fault of anyone. I am sure the district attorney would have done an excellent job had they been apprehended.

Senator SPECTER. Well, it's a police matter at that level.

Judge CIPRIANI. Yes; I would——

Senator SPECTER. In fact, it may be an issue for the witness.

Judge CIPRIANI. Beg your pardon, sir?

Senator SPECTER. It may be an issue for the victim.

Judge CIPRIANI. Well, in any event, what I want to say that I know the indignity of such an event, and I am not one who is maudlin in saying these people should just be treated lighthandedly.

May I also say—and it's part of my report—but I will make mention of it at this time—the National Council of Juvenile and Family Court Judges has created a new committee called the metropolitan courts committee of the 36 largest jurisdictions of the United States, and they have selected judges from each of those 36 districts, and I was honored, Senator, by being made chairman of that.

And one of the reasons I mention it is that the very question you asked is that which they are to consider: what factors should we look to in identifying that person who is likely to become the serious and violent juvenile offender? There will be two workshops this fall, one will be in Detroit, October 10 to October 14, another will be in Phoenix, Ariz., November 29 to December 3. Thanks to the Office of OJJDP which is funding it, we will have judges from all areas meet to see if we can come up with criteria or some way of identifying that corps of people who are causing such distress and harm to all our citizens in the community.

Senator SPECTER. Judge Cipriani, one word of suggestion: Any funding by OJJDP should be effectuated prior to September 30. It was one tremendous battle to get $70 million last year, and it looks like it is going to be a lot tougher. Either that or you might invite Mr. Stockman to be your principal speaker.

Judge CIPRIANI. Well, Senator, I do know this—and I want to say it publicly—that I know of your great involvement and your great assistance last year, and on behalf of the judges of the national council I want to thank you publicly.

Senator SPECTER. We had an enormous process, to get it through the Judiciary Committee at 70 million and to get it through the Senate and to get it through the Congress was extraordinarily difficult, but then there was a rescission, which is a Federal term which means the executive branch, which means the Office of Management and Budget, cuts it out. And a rescission was ordered apparently on October 1, the day the money would have been spent. The rescissor has 30 days, which he did not use all of; we found out about it as it trickled in around the country on people that weren't getting their moneys, and we finally got the formal notice on October 29. And then it is quite a process to get one House—and the Senate finally rejected the rescission, after the Appropriations Committee agreed, after the Budget Committee agreed, after the Judiciary Committee agreed, and after it went to the floor of the Senate.

So that funding did not come easily. So make your plans accordingly, before September 30.

Judge CIPRIANI. Well, I certainly again do say that we thank you for all the assistance that you have given us.

Now, I would like to just conclude by saying that while we have been happy to embark on these various endeavors, these alternative dispositions that we have imposed, to meet our pressing needs, there are elements of a comprehensive spectrum of services that courts are in no position to provide. As I have previously noted, there is a vital need for secure facilities for serious and violent juvenile offenders. I have also noted that the lack of resources impacts negatively on all the other parts of the system. For example, delay in processing juveniles through the system results when institutions are unable to accept committed children for extended periods of time—they don't have beds available—of where the sheriff's personnel in our city is unable to transport the juveniles to and from institutions in a timely fashion, resulting in our juveniles sitting in a youth study center 30, 40, 50 days, which we think is very improper. All that impacts on the work of our court.

And, as a result, it hampers the management of the cases, and I also think it hampers the results of the work of the court because in the followthrough process there is a delay, there are people waiting in wrong places and improper places, and that produces negative comments throughout the community.

Senator, I want to thank you on behalf of our court and for myself personally for this opportunity to make this presentation.

[The prepared statement of Judge Cipriani follows:]

Prepared Statement of Judge Nicholas A. Cipriani

The Family Court Division of the Philadelphia Court of Common Pleas has taken significant steps in the past year to speed the listing of juvenile delinquency cases. As a result of adopting a date and courtroom certain listing system late last year, we have been able to substantially reduce the time needed to schedule juvenile delinquent cases, provide better notification of hearing dates to the parties involved in a case, increase the time available to the prosecution and defense for preparing cases, and reduce continuances.

While each day brings an inventory of cases available for hearing, backlog as it exists in adult criminal court and trial delay are not the problem. This, despite an increasing workload as illustrated by the following statistics:

		1977	1981
(1)	Petitions Filed		
	Delinquent	9344	11269
	Dependent	1504	2904
	Total	10848	14173
(2)	Cases Disposed of		
	a. New Charges		
	Delinquent	12315	13183
	Dependent	1215	2717
	Total	13530	15900
	b. New Charges & Rehearings		
	Delinquent	17889	18808
	Dependent	2055	11049
	Total	19944	29857

In the face of the increased delinquency workload, the court has developed a system of progressive screening of cases which facilitates the processing of delinquency cases. Here again statistics are helpful.

Number of delinquency cases disposed of by type of hearing (new charges)

	1977		1981	
	NUMBER	PERCENT	NUMBER	PERCENT
Intake Interviews	2767	22.5	1327	10.1
Pre-Trial Hearings	3838	31.2	5403	41.0
Adjudicatory Hearings	5710	46.3	6453	48.9
Total	12315	100.0	13183	100.0

The reduction in cases settled at intake reflects that the body of cases coming into court is of a more serious nature. Less serious matters such as status offenses and summary offenses are no longer handled by delinquency court. Studies also underline that the proportion of juvenile cases committing serious offenses has been steadily on the rise at the same time that younger offenders are becoming involved in the more serious crime categories. The dramatic upsurge in dependency matters is the result of legislation mandating hearings and regular reviews of cases in placement.

In regard to case processing time, delinquency cases proceed from Intake Interview to Pre-Trial Hearing in three to four weeks and from Pre-Trial to Adjudicatory hearing in approximately four weeks. This is close to the minimum time necessary for notification and case preparation.

However, the cutback in available funds and budget constraints have resulted in a considerable shortage of professional and clerical staff to adequately handle the current workload. The lack of available clerical and professional staff makes it difficult to service cases received by the Court on a timely basis. Additional probation officers are needed to conduct social investigations, prepare treatment plans and make recommendations to Judges. In addition, more clerical personnel are needed to prepare and update case records, make up court lists, summarize cases for court hearing and inform probation and other staff of Judges' decisions.

Staff is also needed to serve juvenile bench warrants. At present most warrants issued on juvenile delinquent cases are not served due to lack of staff. As a result many juvenile delinquent cases cannot be disposed of.

In cases where a child is committed or placed by the Court, Pennsylvania law requires that the committing Court review each commitment or placement every six months and hold a disposition review hearing at least every nine months. In addition, if a child is voluntarily placed with the Welfare Department and will remain in placement more than 30 days, there must be a court hearing. These provisions have resulted in a tremendous increase in the number of dependent cases listed for court hearing and has placed a considerable burden on the professional and clerical staff. Although we have been able to increase the number of dependent court listings and sessions, this has been done at the expense of reducing the number of Judges hearing other Family Court matters. Additional professional and clerical staff, judges and courtrooms will be needed to list, handle and dispose of the continually increasing number of dependent cases.

A major problem in the juvenile justice system is one of appropriate disposition, most particularly in the case of the serious offender. The lack of appropriate facilities for the serious delinquent offender impacts negatively on the system in a number of ways. It is the area in which there is delay in that it is characterized by searching out some meaningful disposition. The dearth of appropriate dispositional alternative for this type of juvenile offender also breeds the case that stays in the system and then becomes an adult offender and recidivist; replete with a history of arrests in double figures and a potpourri of placements of relatively short duration. Additionally, such offenders require an inordinate amount of time and effort on the part of staff in institutions not designed for their treatment or on the part of

probation officers when they are in the probation caseload; to the detriment of juveniles who belong in these programs.

Two things are lacking in arriving at a solution: money and policy. Although finding money to establish facilities for the serious juvenile offender is a major problem; the lack of a cohesive policy is a far greater stumbling block. The politics of the juvenile justice field polarizes into a group that points out the high percentage of juveniles committing the most serious crimes and hence the need for a vast increase in institutional beds for them and a group that proclaims that virtually no juvenile requires secure custody. Neither side yields or opts for a realistic solution. Immobilization is the result. As the issue remains unresolved, program planning is impossible and the end result is a vacuum of treatment under juvenile justice auspices and increasing number of juveniles certified to the adult system.

The Family Court has worked to fill the gap in dispositional alternatives by conceptualizing its own programs to meet the specialized needs of its changes.

PROGRAMS INSTITUTED

THE OFFICE OF SPECIAL SERVICES was established and staffed with experienced professional personnel responsible for recruiting a large number of volunteers and coordinating their activities within the Family Court. In a typical year, 273 citizens gave 19,828 hours of service to the court in a variety of assignments developed through the Special Services Office. In addition to one-to-one assignments, these include youth employment work, reception and information services for clients awaiting intake interviews at the detention facility, remedial education programs, recreational activities, practicum and intern experiences for those entering the child welfare field, assistance to court staff with caseload duties, statistical data gathering and keeping the court staff informed with detailed information regarding new

community programs and resources. The Special Service Office maintains an information center that provides court staff with up-to-date comprehensive, community resource information. Volunteer Resource Finders seek out services able to meet the full scope of client needs. Its resource file numbers over 1,000 services ranging from church-basement tutoring programs to major agencies. They are able to offer a profile matching community services to a particular client's needs. The service has been recognized as the basic such tool in the community and is so utilized by many other agencies.

COUNSELING AND REFERRAL SERVICES, the Court's diversionary arm, which has as its main function diverting children from the court process so that they may be treated in the community by our staff and the staffs of associated community agencies, preceded such efforts by many years. Its highly successful mediation service resolves family and life stress problems that are immediate and often dangerous to those involved. It also provides an avenue for any adult in the community with a complaint involving a child to settle that complaint satisfactorily outside of a court hearing.

THE INTENSIVE PROBATION UNIT allows a probation officer to maintain a limited caseload in order to keep close observation of the probationer and keep in close contact with his family. The probation officer is able to see each probationer and his family with great frequency and supply the additional support required in the rehabilitation of juvenile offenders presenting especially difficult problems.

CORRECTIONAL GROUP COUNSELING - representing an integration of the court's probation and mental health services, focuses group treatment methods upon a multi-faceted array of problems affecting juvenile behavior and family conditions.

COMMUNITY RELATED INSTITUTIONAL PROBATION - entails another profound departure from traditional probation practice by maintaining continuous

contact with the juvenile and his family during institutional placement. From the beginning of the placement period, a probation officer works with the juvenile, his family and institutional personnel toward making the institutional experience most profitable, planning toward release and ultimate support during the after-care period.

PRE-HEARING INTENSIVE SUPERVISION UNIT - is designed to provide intensive supervision with a casework approach to "high risk" boys who would normally be placed in detention during the period between the arrest and the final adjudicatory hearing. This close supervision allows the youth to remain in the community and provides an opportunity to begin plans for the rehabilitative treatment of the youth in a more cooperative atmosphere than possible in the detention setting. The program goal is to remove high risk youth from the detention facility without increasing the risk to the community safety.

A number of community agencies meeting gaps in resources were brought into being directly through court sponsorship and received our continuing aid, often including our contribution of space, personnel or service. These include:

TEEN-AID INCORPORATED - a voluntary service organization dedicated to the rehabilitation of adolescent girls through a one-to-one relationship with a supportive adult.

CORA (Counseling and Referral Assistance) - a community-based, non-residential counseling and referral agency geared to the prevention of delinquency through interventive and supportive services to children and their families.

YOUTH ASSISTANCE FUND - a fund operated in cooperation with the Urban Coalition which provides financial assistance in one-time grants offsetting material needs contributing to undesirable behavior.

CHILD ADVOCACY PROJECT - a project administered by the Defender Association providing the court the resource of assignment of legal counsel to all deprived children requiring such service.

COMMUNITY BASED ALTERNATIVE TREATMENT PROGRAM FOR JUVENILES - A full year of the most intensive work was involved in preparing a carefully planned, solidly constructed program designed to serve as direct alternative to institutional placement, which offered a model for the entire nation. The corporate grants of the private sector - - Philco-Ford, Thiokol, Avco, R.C.A. and Westinghouse and others were enlisted to join with us in establishing twenty-two residential centers blanketing the city, particularly the highest delinquency areas.

The industries responded with enthusiasm and invested much money, manpower and professional expertise in developing proposals for centers providing a comprehensive treatment program individually tailored for each juvenile at the center. Each firm would operate a specified number of centers in a designated geographical area. Existing and developing community resources in each area would be utilized in support of the residential centers. While private sector participation was in no way an absolutely vital component in the plan's implementation, it had the unique advantage of offering a number of diverse developmental models for comparison and gave access to a priceless bank of academic, organizational and managerial skills.

After lengthy negotiations with LEAA, funding was not available. The proposal, however, did anticipate and offer stimulation to present efforts in this direction.

While we have been happy to embark on these endeavors in order to meet pressing needs, there are elements of a comprehensive spectrum of services that Courts are in no position to provide. As I have previously noted, there is a

vital need for secure facilities for serious and violent juvenile offenders. I have also noted that the lack of resources impacts negatively on all the other parts of the system. For example, delay in processing juveniles through the system results when institutions are unable to accept committed children for extended periods of time, or where the Sheriff's personnel is unable to transport juvenile to and from institutions in a timely fashion.

Recently, the National Council of Juvenile and Family Court Judges formed a Metropolitan Courts Committee, consisting of thirty-six (36) Presiding Judges of Juvenile and Family Courts from the largest jurisdictions in the country to study and discuss the problem of serious juvenile crime in mtropolitan areas. One of the Sub-Committees is entitled "The Court, Systems Improvements". Among the matters this Committee will consider are:

1. Proper allocation of Judicial and related resources for effective management of Courts

2. Improvement of Court operations regarding scheduling, docketing, coordination with police, prosecution, defense, victim and witness notification of hearing dates

With the assistance of OJJDP, the Metropolitan Courts Committee will sponsor two workshops this Fall on Serious Juvenile Crime and Metropolitan Areas. The first workshop

will take place in Detroit, Michigan, from October 10 to 14, 1982, and the second workshop will be held in Phoenix, Arizona, from November 29 to December 3, 1982.

Speaking as Chairman of the Metropolitan Courts Committee, we shall be eager to learn of the findings of your Committee regarding the operation of juvenile courts. I pledge the cooperation of the Metropolitan Courts Committee and offer to aid your Committee in any way you feel we can be of assistance.

I want to thank the distinguished Senator from my State, Arlen Specter, for the privilege of making this presentation.

Senator SPECTER. It's very nice to have you here, Judge Cipriani. Thank you very much.

We turn now to Judge Harry Takiff, who is formally the administrator of the asbestos litigation calendar. Judge Takiff is a very experienced lawyer, having worked in the civil litigation field for many years before coming to the court of common pleas on December 29, 1971, and, as I say, worked in the special investigating grand jury, I think with great distinction, in 1972 and 1973, and then continued as the supervising judge of the grand jury under the direction of the State attorney general beyond that point.

And it is a great pleasure to welcome you here, Judge Takiff, on the issue of calendar control, and as the civil list has an effect on availability of resources to try the criminal cases.

STATEMENT OF JUDGE HARRY TAKIFF

Judge TAKIFF. Thank you very much, Senator, I am delighted to be here with you, and happy to see an old friend and associate, Paul Michele, with whom I was privileged to work back in the years 1972-73, and to see how handsomely he has aged in the Washington climate. I haven't seen him for some time.

I have no prepared comments. A number of subjects that were touched on during the course of Judge Savitt's presentation may prompt some questions and some additional comment from me.

A primary subject of your inquiry has been the matter of calendar control, and I think, before I touch on asbestos litigation, unless you have some special reason why I should confine myself to

that subject, I would like to address the subject of calendar control generally on the civil side.

Senator SPECTER. Please do, Judge Takiff.

Judge TAKIFF. I think that in the court of common pleas in Philadelphia in the past number of years we have matured, if I may use that word, into accepting the responsibilities that the court has with respect to the control of the civil litigation .

There was a time, some years back, when the movement of cases on the civil side was pretty much left up to the whim and choice of the attorneys themselves, so that a case did not rise to the level of coming to the attention of the court to be processed unless and until the attorneys filed what we knew as a certificate of readiness. Until that point, it was simply a matter of papers accumulating in the office of the prothonotary and the entry of notations on the docket. The case first came to the attention of the court, so to speak, as, if and when the attorneys saw fit to list it.

When the cases were listed under a certificate of readiness identification, they were then put on a calendar and we went through a variety of experiences. Back in 1972 we attempted an individual calendar program, in the sense that each one of the judges who were then assigned to the civil trial program was given a batch of 250 to 300 cases, and was responsible for the movement of those cases—pretrial motions, listing, and ultimate trial. That program, under President Judge Jamison, who was then the president judge of our court, had a short life history. After about 8 or 9 months, it was terminated. Some of us did not quite understand the rationale for the termination of that program, because individual assignment of cases to judge for individual control had been commonplace in the Federal court system for many years.

Senator SPECTER. Judge Takiff, I recall that program very well, and it seemed to me that it was quite an excellent program.

Judge TAKIFF. I was told at the time that it was not as effective as it appeared to be; that, for some reason, court administrators felt that they did not have as effective a monitoring ability over the movement of cases as they had when cases were assigned out of a calendar assignment room. And so, notwithstanding the protests of some who participated in the program, we entered onto a pure assignment out of a calendar room. A case appeared on a calendar by virtue of a certificate of readiness; it was put into its position as of the date either of the certificate of readiness, which came early in the program, and later as of the date of the first filing of the case. And then as that case popped up on that list and a courtroom became available, the next open case was assigned by the calendar judge—the next case on the list went to the first open judge.

This program went on until about 1977, as I remember it, when some of us prevailed upon the president judge to attempt a program of individual calendar assignments. President Judge Bradley was receptive. And I have brought with me some of my early records as to what happened at that time.

An experimental program was initiated where some five judges were each assigned 100 cases, taken in rotation and sequence, as chronologically appearing on the trial list, and the judges to whom the cases were assigned were thereafter responsible for all pretrial

and trial proceedings, and, at the expiration of a given period of time, a fresh assignment would be made.

That program was initiated in the fall of 1977. The selection was done purely on the basis of the sequence of cases. My record indicates that the first group of cases assigned then were aged 4 years and 8 months from the date of first filing—they were that old.

We continued that program down to the present time. The number of judges assigned to the individual calendar program has always been a limited number; it has ranged from five to as high as eight. At the moment, I believe it is down to two or three.

But in the most recent assignment that I had, June 1982, the cases assigned to me were then aged 2 years and 5 months from the date of first filing.

Senator SPECTER. And were you then in a position to move those into a trial, a courtroom, Judge?

Judge TAKIFF. Oh, of course. When a case was assigned to a judge on the individual calendar program, responsibility of the judge is to schedule a pretrial conference promptly, meet with the attorneys, see whether there were any issues that were then pending, and move the case either by settlement or by trial listing, and give a date for trial.

Senator SPECTER. Were those average cases, run-of-the-mill cases? You didn't have any special——

Judge TAKIFF. None at all. The manner in which the cases were assigned, as I understood it, was in the following fashion. The total calendar on the ready trial list is available on a computer printout. When an assignment is to be made to the individual calendar judges, the computer drops down 100, 200 cases from the top to permit an available inventory of cases for the nonindividual calendar judges. It then distributes out in automatic rotational sequence, 100 or 125 cases to each of the individual calendar judges. There is no selection; there is no choosing, so to speak, of expertise among the judges. The judges who have participated in this program are a cross-section, representative of the quality and the backgrounds and the experience and the special expertise, if you please, of the judges.

But the program has been enormously effective, and in truth, involuntarily, I think we have stumbled upon a very effective calendar control program.

Senator SPECTER. Would you recommend the individual judge calendar to be more broadly utilized in common pleas court, Judge?

Judge TAKIFF. I do. But supplement it in the interesting fashion in which we have stumbled into it. And let me amplify that, if I may.

We have two ways at the present moment of assigning cases to judges on the civil side: One is the historical one—the next case available is assigned to the next open judge. We have the other, the individual calendar judges. If, as Judge Savitt indicated, there are some 23 judges assigned to the civil program generally, you must understand that includes equity, nonjury judges, jury judges in general cases, jury judges in the major cases. When an individual calendar judge has listed a case out of his program for a given day for trial and, as is not uncommon, that case concludes either immediately upon the call of the case for trial, when the attorneys face

the moment of truth and the case is settled, or it may settle in the midst of trial. A very, very small percentage of cases, as you well know, are concluded by jury verdict. Nationally, not more than 5 to 10 percent of all cases that are nominally jury trials yield jury verdicts; they are concluded far in advance of verdict, either by virtue of dismissal, by virtue of abandonment, or, most characteristically, by virtue of settlement.

Senator SPECTER. Has that figure gone up or down over the experience you have seen, Judge Takiff? You have been in the court for a number of years.

Judge TAKIFF. In general civil work?

Senator SPECTER. Yes.

Judge TAKIFF. I would say that the figure has been essentially static—variable in asbestos; I will talk about that.

Senator SPECTER. How about your own personal practice? Did you settle 90 to 95 percent of the cases that you handled?

Judge TAKIFF. When I was in trial?

Senator SPECTER. Yes.

Judge TAKIFF. When I was in general practice? I don't think I did, because I was in a special situation in terms of my litigation experience, and I was assigned a group of cases that had high trial expectations, so that I don't think my——

Senator SPECTER. You think that was a function of the cases rather than the litigator?

Judge TAKIFF. I believe so. I think that I was assigned cases with a specific——

Senator SPECTER. I recollect, just vaguely, that you tried more than 5 or 10 percent of your cases.

Judge TAKIFF. But I think, sir, that that was by no means characteristic nor was it representative of anything except the fact that this one person was given a certain group of cases to handle.

But, generally speaking, as I have observed it over the years, both as a lawyer and as a judge, I think that this is the actual experience that has been basically undeviating. Of the cases that nominally are listed for trial, not more than 10 percent generally are concluded by verdict. I have some figures of the actual experience in Philadelphia County. In 1980, on the civil jury list, there was a total of 4,896 cases; of that, 242 were nonjury cases and disposed of at that level; the balance were jury cases. Of that entire group, only 318 were tried to verdict. In 1981, there is a similar figure. Out of 5,883 cases, 171 were nonjury, 253 were tried to verdict.

This is characteristic, and it is not unique to Philadelphia; it is a national experience. And the deviation from that national experience in the field of asbestos poses the special problems that the asbestos litigation——

Senator SPECTER. Well, it's really interesting that the Philadelphia Common Pleas Court has made such strides on the civil line, because not so many years ago there was a 6-year wait. But my sense is that, notwithstanding the Herculean efforts of the past 6 months, the criminal dockets have not enjoyed the same kind of improvement. And maybe it is attributable to the individual judge calendar, Judge Takiff.

Judge TAKIFF. I am not certain of that. No. 1 I did hear Judge Savitt observe the reduction of some 25 percent in a 6-month period in the current year; I thought that was a rather substantial reduction in terms of backlog.

But what I want to point out with respect to our individual calendar program, and how we have somehow stumbled into what I think is the best of all possible worlds inadvertently given my assignment as an individual calendar judge of a case to try starting on Monday, and my case concludes on Monday, Tuesday, or Wednesday, and I had anticipated that that was a 5-day case so that my next scheduled trial is not until the following week, what do I do? I then call the calendar judge; he has available an inventory of cases in the normal nonindividual list which he distributes out to those judges who are not on the individual calendar, and by virtue of availability he now takes, again off the top of the list, the next available case and he assigns it to me. So that the judge has maximum control over the cases assigned to him and maximum availability should those cases go through the historical pattern of settlement before a verdict. So that we have had, I believe, to the credit of the administration in Philadelphia, an incredible progress in the movement of cases. And this notwithstanding two very substantial things that occurred in the past several years since we started the individual calendar program. Back in 1980, the then chief justice, Michael Egan, recognized that there was a basic and fundamental failure on the part of the judiciary to assume a proper role with respect to the control and movement of cases. And so he enacted what was known as order 161. That required that if a case had been initiated in the court system by filing and it did not have a certificate of readiness filed within 240 days from the date of first filing, without court approval of an extension of that time, that case could be dismissed.

What did that represent? It represented for the first time in Pennsylvania a recognition of the fact that the court, the judiciary, has a responsibility to the litigants that goes over and above the personal needs, convenience, and wishes, if you please, of the attorneys; that the court is saying, we are here, we are available, put your case on the list or show cause why it is not ripe for trial at this time.

We assumed, by virtue of that court order, a responsibility for the progress, the movement of litigation, a responsibility that I think is appropriate for the judiciary.

By virtue of that, several interesting things happened. Up until that point, we did not know in the city of Philadelphia how many cases we had in the civil system; we only knew how many cases were the subject of a certificate of readiness, because until the certificate of readiness was filed, that case never appeared in our calculations; it never appeared in our computer controls; it was only the filing of the certificate that brought it to the level of consciousness of the court.

By virtue of the mandatory 240-day rule, however, we suddenly discovered that wallowing in the depths of the prothonotary's office were perhaps another 8,000, 10,000 or 12,000 cases that for the first time had to emerge or be forever buried in that mud.

And so there was an enormous thrust of a fresh inventory of cases previously unknown to us.

Senator SPECTER. What was the longest tenured case, Judge, that you found?

Judge TAKIFF. I was familiar at the time with a 16- year-old case that had been lying dormant essentially—oh, periodically there would be a hiccup or a burp or the equivalent, but essentially the case was inactive.

Senator SPECTER. Sixteen years old in the prothonotary's office?

Judge TAKIFF. Yes. And this order by the Chief Justice and the Supreme Court I believe to be a forward movement in the recognition and assumption of responsibility by the court. Now, that was of short-lived duration; for reasons that were never explained, that order was revoked. But, to the credit of the president judge of Philadelphia County, and to the credit of the president judges of many of our counties, we in turn adopted local rules. And presently we have a 365-day rule in Philadelphia. Within 365 days from the day of first filing, a case appears on the trial list unless that has been deferred by order of court. No certificate of readiness need be filed; a case is ready within 365 days or it is vulnerable and can be dropped from the system. The court has responsibility, therefore, from the date of first filing to monitor the movement of litigation and to control it.

And I believe but for the fact of that enormous influx of cases, of some 8,000 or 10,000 cases that came out of the mud, as I have previously described it, we would be within 1 year of trial disposition from date of first filing, as of right now. And it is my further expectation that given the current practices that have been initiated in Philadelphia and the current procedures that are being followed, though right now we are 2 years and 5 months between date of first filing and trial date, or readiness for trial, under the control of a judge, it is my anticipation that in the very near future we should attain the extraordinary status of being able to try civil cases within 1 year from date of first filing.

And I think an enormous amount of credit is belatedly due to the present administration in Philadelphia for having the courage and the willingness to attempt new and innovative procedures in an effort to court with court management.

Senator SPECTER. Judge Takiff, let me shift to the asbestos problem, and let me begin with the legislation which has been introduced captioned the Asbestos Health Hazard Compensation Act, which is a bill providing for compensation through existing State and Federal worker compensation programs with rights of appeal to the Benefits Review Board established under the Longshoremen's and Harbor Workers' Compensation Act. And this compensation would be the exclusive remedy. Recovery against the employer, the employer's insurance company, or a third-party liability suit would be eliminated, punitive damages to be disallowed.

What is your sense as to this overall concept, based on the extensive experience you have had in the asbestos cases?

Judge TAKIFF. I don't know that this particular act will solve the present problem with which we are confronted in our courts, insofar as its retroactivity and its applicability to the existing claims that are present in our court and in a number of courts throughout

the country. What I am convinced of in my own ignorance is that there has to be some method, some procedure, other than traditional judicial process to cope with this enormous problem.

Senator SPECTER. What do you suggest?

Judge TAKIFF. Senator, I have no suggestions. I can tell you my view of the parameters of the problem, and I believe justify my concern that it is literally overwhelming. Let me give you some insight into what we have had in Philadelphia.

We started our exposure, so to speak, to asbestos litigation in July of 1977 when some 40 cases were then docketed involving claims arising out of asbestos exposure. Those cases involved a total of about 25 or 30 defendants in each case. There was a multiplicity of pretrial discovery, petitions, and motions, assigned to a variety of judges, with the resultant confusion and occasional contradiction. The attorneys involved requested the presiding judge to assign all of those cases to a single judge for all pretrial and trial purposes. I was selected for that purpose.

From that point on, I have watched 40 cases grow, and I have been responsible for the operation of our court insofar as asbestos litigation. And I checked on the numbers. I was asked by a justice of the supreme court to report as of June of 1982. June 24 we had open 1,777 cases. Since then we have added a few since June 24. As of August 11, the computer informs me that I have responsibility for 2,167 cases.

Senator SPECTER. Judge Takiff, do you find any problem with—or what do you conceive to be the legal difficulties with eliminating the right of jury trial in this field?

Judge TAKIFF. That's a matter that is pending before the Supreme Court of Pennsylvania right now. Our court adopted a local rule that mandated nonjury trials in asbestos-related cases with an absolute right of trial de novo to a jury trial if anyone was disgruntled. We had a reason for that.

Senator SPECTER. And you tried a great many cases nonjury?

Judge TAKIFF. We have tried no cases nonjury. As soon as that rule was promulgated, it immediately became the subject of two writs of prohibition, one filed on behalf of a plaintiff and one filed on behalf of a defendant.

Senator SPECTER. And the State supreme court has heard argument on the matter?

Judge TAKIFF. Not yet. The supreme court will hear argument, we hope, in September. But the rationale behind it I think is terribly important. I gave you preliminarily some observation with respect to what is the general experience in civil litigation—we try to verdict 5 to 10 percent of our cases. That is the national experience, that is the local experience.

What has been the experience in asbestos litigation? The first 100 cases assigned to me for trial, or that I assigned to myself essentially, I tried the first case for 13 days; that settled on the 13th day. And the next cases, the next 99 cases, were listed for trial in a variety of procedures whereby we worked out a methodology that would permit the litigants to look at a reasonable number of cases.

Senator SPECTER. Judge Takiff, may I interrupt you for just a moment. We have to hear District Attorney Rendell, and then I have a very important luncheon date with you, and I have to pre-

side over the Senate at 2 o'clock. So we are going to have to move through, say within the course of the next 8 or 10 minutes—if you could give me the kernel of your recommendation in this very complex and important field.

Judge TAKIFF. The kernel of my recommendation is that unless there is some method, such as nonjury or other procedure whereby we can expedite the trial of these cases, in view of the current climate of no settlements, because that is the current climate in Philadelphia and elsewhere—some of the litigants are insisting upon full trial. A full trial of an asbestos case is not less than 2 to 3 weeks. If a typical case takes 3 weeks to try and you had 10 judges trying them, and every judge worked 50 weeks a year, you could not try more than 25 cases per judge, 250 cases a year for 10 judges, and you are gaining an inventory at the rate of 50 to 60 cases a month—and you can anticipate continuing that inventory growth to the year 2000.

Senator SPECTER. Judge Takiff, would you be willing to take a look at this legislation, the Asbestos Health Hazards Compensation Act, and let me know what you think of it, or what changes or modifications you would suggest, because this issue is one of national importance. I have had visits from people in this field who have told me of similar experiences, tremendous burdens on the people who have been injured, waiting long periods of time, tremendous burdens on the companies, on the insurance companies, really threatening to put the asbestos industry out of business—and you have had a very profound experience. And I would be very grateful if you would take a look at that legislation and let me have your recommendation.

Judge TAKIFF. I would be very happy to do that, Senator, and I would, by the same token, welcome any suggestion that can come out of this committee to salvage what I anticipate to be the inundation of the judicial process under the flood of asbestos litigation.

Unless something is done, in my judgment, there is no judicial system in the country that can adequately cope with the volume of litigation in its present posture of try every case to verdict. That is insisted upon by 1, 2, or 3 of the defendants out of a group of 20 or 25 defendants.

I want you to understand something very clearly, sir. In any given case, we have anywhere from 20 to 25 defendants; the overwhelming majority of those defendants are conducting themselves in the traditional fashion: They are looking for settlement and looking for early settlement as the prudent expeditious way of resolving the conflict. But so long as one or two defendants insist, for reasons best known to them, in their own self-interest or self-preservation, or however you label it, to try the case, the case must be tried in its entirety. And with a typical jury trial, in a matter as complex as asbestos litigation, with the complexities of the technology involved and the medical information that is involved, this cannot be done under conventional judicial processes.

And something innovative, something different, must be worked out to cope with this extraordinary flood of litigation that in my judgment will be with us.

Senator SPECTER. Well, take a look at the act, and perhaps we can figure something out.

We will take a 5-minute recess, and then we will hear from District Attorney Rendell.

Thank you very much, Judge Savitt, Judge Cipriani, Judge TAKIFF.

[The subcommittee recessed at 11:46 and reconvened at 12:09 p.m.]

Senator SPECTER. We will resume this hearing with the presence of the district attorney of Philadelphia, Hon. Edward Rendell. We very much appreciate your appearance here today, District Attorney Rendell. We had called you late in the afternoon after Justice Flaherty had given us the notice that he would not be here, because of our interest in having another point of view on the administration of the Philadelphia criminal court system. The problems of administration and trial delay are of tremendous importance, subjects that you and I have worked on together when we served in the district attorney's office together, subjects which you have continued to work on, and the committee appreciates the testimony that you have given us in the past and are grateful to you for responding on such short notice today, and we look forward to your testimony.

STATEMENT OF HON. EDWARD RENDELL, DISTRICT ATTORNEY OF PHILADELPHIA

Mr. RENDELL. Thank you, and good morning, Senator. I appreciate the opportunity to come down. In fact, prior to your call late yesterday afternoon, I had expressed, through one of your staff members, interest in coming down on some other day if you had these hearings.

Senator SPECTER. We may call on you again when we come to district attorneys panels, because we are going to be looking at this subject in really great depth.

Mr. RENDELL. Well, I think it is a subject of the utmost importance, because—and one of the reasons I am glad to be here—I know you personally don't need a reminder of this, but when people study the question of backlog, somebody has to say stop, slow down and think a minute. Reducing the backlog in and of itself is not a goal that should be pursued recklessly, heedlessly; it's a goal that only means something if we can reduce the backlog and maintain quality prosecution and quality trials and quality dispositions.

It is my view that although we have made significant progress in Philadelphia, really dating back from the year 1966, when you became district attorney, that the quality of our dispositions is not high enough yet. And in the name of an effort to reduce backlog, if we take steps that will jeopardize even the existing quality of those dispositions, we would be committing, in my judgment, a very, very tragic error. I know that is not the intent of this subcommittee chaired by you, Senator, but I think it's important to mention that from the beginning.

Crime in an urban center is an interesting phenomenon because it's the one area where the demand for services from Government has gone up. If you look at the 1980 census and compare it to the 1970 census for Philadelphia, or, for that matter, for any major

Midwestern or Northeastern city, you will find that the populations have all gone down, and, therefore, there are less people to house, less people to feed, less people to educate, less people to transport in and out and throughout the city, and so the demand for those services could honestly be said to have diminished. And if there are going to be Government cutbacks, a case can be made, although I don't necessarily agree with cutbacks in those areas—but a case can be made that we are going to spend less money on education because we are educating less people.

However, in crime, in Philadelphia and in every major city, again the Midwest and the Northeast, the demand for our services, the services of the criminal justice system—police departments, district attorneys' offices, court administrators, judges themselves—the demand for our services has gone up enormously.

Judge Savitt will correct me if I am wrong, but I don't think Philadelphia has been granted any additional judges since 1973. In that 9-year period, the violent crime rate, the serious crimes that require complex handling, has gone up close to 55 or 60 percent. We in law enforcement—the Philadelphia police force has stayed at a number actually below what it was a decade ago, although violent crime is up enormously. You are aware, Senator, because you are from Pennsylvania and the Philadelphia area, that in 1979 there were only 80,000 violent crimes committed in the city of Philadelphia. In the year 1980 that jumped in a 1-year period to 101,000 violent crimes.

Senator SPECTER. From 79,000 to 101,000?

Mr. RENDELL. A 22,000 increase in 1 year. Last year we went down by some 500, so we are over the 100,000 level.

Senator SPECTER. And you define a violent crime has an aggravated assault on up?

Mr. RENDELL. The definition is a part 1 crime, which are all crimes of violence, with the exception of auto theft.

Senator SPECTER. How do you account for that?

Mr. RENDELL. I think basically because of economic conditions; I think that that is the most clear indicator.

Senator SPECTER. From 1979 to 1980?

Mr. RENDELL. Yes.

Senator SPECTER. What were the conditions in 1981? They weren't any better.

Mr. RENDELL. No, but 1981 we didn't go down—we went down 500-odd cases. We stayed at the 100,000 level.

Senator SPECTER. How about the first 6 months of 1982?

Mr. RENDELL. We don't have those figures in for the first 6 months of 1982 yet.

But the point in raising that statistic is, that the demand for our services went up in that 2½-year period—it went out of control; 22,000 additional violent crimes a year translates into 7,000 to 9,000 additional either municipal court cases or in criminal information in our common pleas court. In my last year——

Senator SPECTER. How has your budget fared?

Mr. RENDELL. I have been the only one in the criminal justice system who has done well. In the 4 years that I have been district attorney, my budget and my personnel are up about 25 percent,

our case load is up 33 percent. So I am not even holding my own, and yet I am the only agency that has gone up.

Senator SPECTER. How many assistant DA's does the office have now?

Mr. RENDELL. In our general fund budget 204, and 6 that are being carried in the IV-4 program. So a total of 210. Up from 163, when I took office.

But other parts of the criminal justice system have not fared nearly as well. They have had to face that 33-percent increase with no additional personnel. For example, a figure that you would understand quite clearly—the year before I became district attorney as opposed to 1981, the last year of my first term, we had the problem of dealing with an additional 7,700 criminal informations in the year 1981 than we did in the year 1977. So obviously there are going to be backbreaking problems given to a justice system that isn't getting the resources it needs. Frankly, the State government has been no help; in fact, the State government supplement to our court system in Philadelphia County went down last year—I don't know if Judge Savitt covered that in his remarks; the city government doesn't have the overall financial wherewithal to respond on a broad sense—it can respond in limited-crisis situations. And really, in the last analysis, we have to look to the Federal Government, and the Federal Government has helped us in this battle with backlog and the fight to retain quality prosecution in the past.

As you are aware, Senator, during the auspices of LEAA, there were many wasteful dollars distributed, but there were many dollars that were crucial—for a rape unit and a career criminal unit and a career criminal program in our courts which allowed us to retain high-quality disposition for both rape cases and career criminal cases. You talked about, with Judge Cipriani, career criminal programs. Thanks to the Federal dollars that created and allowed us to have a career criminal program, I was able, once the Federal funds ran out, to persuade city council to retain that money. And now our career criminal program, freed from the Federal bureaucratic restrictions, is taking all cases where there are certified juveniles that are coming into our court system, who have committed crimes of violence.

Senator SPECTER. What is the scope of the problem, if any, Mr. Rendell, on people on bail, for example on a rape charge being charged with another rape while on bail, or, similarly, on bail for aggravated robbery?

Mr. RENDELL. I think that is a problem—there is no question about it, it's a significant problem. It's less of a problem in the other end, people who are charged with a crime of violence get probation and subsequently committing crimes at that end of the system. But it is a problem, there is no question about it.

You are aware of the three-judge court's order in the county prison overcrowding cases. Well, the statistics as to people of the three-judge court as released on their own recognizance are absolutely staggering; they are enough to make anybody with any commonsense at all say stop, we have got to stop the three-judge court releasing anybody, because over 50 percent of the people they release, while they are on their own recognizance, are arrested for other crimes, and of the remaining—and sometimes they are

held—and close to 40 percent don't bother to appear once they are released on their own recognizance.

So the problem of the quantity of cases and the backlog poisons every facet of our system; it colors everything we have done. And on the question that you are most immediately directed to, directing your attention to, the administration of the courts, let me say that, as you are aware, I have been a critic of the administration of the courts for several years—in fact, in the week following my reelection, I called on the Supreme Court to possibly oversee the operation of the court system here and asked them to order the courts to put seven or eight basic steps into operation. However——

Senator SPECTER. What did you ask for then?

Mr. RENDELL. A number of things which I am happy to report that have without the Supreme Court ordering them, have been put into effect with the results that Judge Savitt told you about. What Judge Savitt testified to is correct: we have done in the last year, even less than a year, from November to August, we have made significant improvement, the most significant improvement that I have seen in the 15 years that I have been associated with the justice system from the time I was a law clerk in the district attorney's office, headed by yourself.

Senator SPECTER. What were the changes?

Mr. RENDELL. No. 1, to deal with the waiver case backlog—and you know what that is; it's a phenomenon basically in Philadelphia—we don't have a high guilty plea rate, we have a high waiver disposition. We had an enormous backlog in the waiver program, because, frankly, our office over the first 4 years I was DA refused to engage in the plea bargaining that had gone on under my predecessor, and the backlog grew, there was no question about it—more cases went to trial, more cases were sought to be delayed by defense counsel because we were taking a much harder approach to the crimes of violence in the waiver program. The courts responded by adding two additional courtrooms to the felony waiver full-time list—the list went from seven to nine, and there was actual court construction, two old rooms in city hall that were used for other purposes were at expense to the court system converted into courtrooms.

Second, and in my judgment very importantly in both substance and symbolism, Judge Bradley and Judge Savitt stood firm against some criticism from their own colleagues and imposed Saturday court for a 6-month period, which was a tremendous success. Saturday court, which with only 4 courtrooms operating on I think 23 Saturdays in the first half of the year, we were able to dispose of an additional 391 felony waiver dispositions that we would not have disposed of without that.

Senator SPECTER. Do you agree with Judge Savitt's conclusion that that is no longer necessary?

Mr. RENDELL. I would like to have seen it continued out for the rest of the calendar year. I wouldn't think that it would be necessary as a permanent problem. Our felony waiver backlog is down by over 1,200 cases in less than 7-7½ months—and that is enormous progress.

Senator SPECTER. How has the sentencing been, the disposition of those cases?

Mr. RENDELL. The sentencing pattern has stayed at least the same and has continued, in my judgment, to show the gradual increase that we have had over the 4½ years that I have been district attorney.

Senator SPECTER. How would you rate the sentencing?

Mr. RENDELL. Right now?

Senator SPECTER. Yes.

Mr. RENDELL. The sentencing is poor to fair. The sentencing, when I took over as district attorney, was atrocious—so poor to fair is significant progress. The mandatory sentencing bill will, in my judgment, if properly enforced— and at least for our part we intend to enforce it, not to engage in charge bargaining—will jump that poor-to-fair sentencing ratio to fair to good.

Senator SPECTER. And what will it do to your backlog?

Mr. RENDELL. It will create a significant problem with our jury trial backlog. It will not hurt the felony waiver backlog and the progress we have shown I think will continue, and the court system deserves praise for doing that.

Senator SPECTER. Will the felony waiver program involve cases which are subject to the mandatory sentencing?

Mr. RENDELL. No; it is both the feeling of the Public Defender's Office that they will ask for jury trials in all cases, or guilty pleas—but guilty pleas or jury trials, and, frankly, it is my feeling, you know, that we still at least, in most lower courts, retain the right to ask for a jury trial pursuant to criminal rule, although it is not clear how the Supreme Court is going to rule on commonwealth right to a jury trial. But we have——

Senator SPECTER. Does the commonwealth have a right to a jury trial now?

Mr. RENDELL. The criminal rule of procedure—by rules of criminal procedure, yes—I'm sorry, by statute, yes. The rules of criminal procedure were changed and by omission the commonwealth right to jury trial was deleted. Whether that was deliberate or intentional omission——

Senator SPECTER. The State Supreme Court took it away from the district attorney on one gloomy day in about 1971.

Mr. RENDELL. Well, we got it back, it was taken away again.

Senator SPECTER. There was a statute passed.

Mr. RENDELL. Right. Another statute was passed pursuant to the action of the rules committee. The question that remains to be determined is whether that statute is substantive or procedural; if it is substantive, obviously it is constitutional, and if it is procedural the Supreme Court could void it.

Senator SPECTER. Isn't that subject to litigation? There probably is not much doubt as to which way the Supreme Court is going to go in terms of the scope of its power.

Mr. RENDELL. Well, we are hopeful that they will find it to be substantive and constitutional. With the new elections and the new judges taking the bench in January, we are much more hopeful of winning that issue.

Senator SPECTER. Is that before the Supreme Court now?

Mr. RENDELL. Five cases have been certified up from the superior court, all raising that issue.

Senator SPECTER. And what did the superior court say? The superior court didn't——

Mr. RENDELL. The superior court certified them up. So we are hopeful we will win, but for practical effect the calendar judges in all programs follow the statute, and we do have the right to jury trial. And it is my belief that in a case that fits into the mandatory guidelines, I would allow it to be tried as a waiver in front of any specific judge one time. And if I believed that that judge by his verdict was using the verdict to avoid the sentence required by the legislature, that would be it. We would not waive in front of that judge in mandatory sentence cases.

So for all intents and purposes I think they basically all will be jury trials. I know your office is aware of that problem, because we have been in touch with both you, Senator, and Mr. Levin as to the question of helping us find resources for the extra courtrooms that we are going to need.

Senator SPECTER. Well, we have moved ahead in an effort to try to get you some help on the old Federal courthouse at 9th and Market, but I understand that since you wrote to me on that subject, the efforts have been redirected to the——

Mr. RENDELL. The annex.

Senator SPECTER. To the annex?

Mr. RENDELL. Yes. But that is all conditioned upon whether the mayor and the finance director will allocate the necessary money, one, for the conversion of the Annex, and, of course, two, for the personnel themselves. So it is possible that we may be back to your office and the GSA to see whether we can get some of that space which is either vacant or not heavily used, depending——

Senator SPECTER. Well, why not pursue the old Federal courthouse?

Mr. RENDELL. I think it's a good idea, and I think it would be a cost saver, but logistically the sheriff and other elements in our criminal justice system believe the annex, because of its proximity to the city hall, would be a better place, if it's feasible for the money to be raised.

Senator SPECTER. Well, couldn't the courthouse at 9th and Market be used on cases where people are not in detention?

Mr. RENDELL. Sure, although detention facilities can be constructed at Ninth and Market very easily—we have been in touch with those people.

It seems to me the problem is GSA wants a significant amount of money for it. They asked for half a million dollars, and they got a half a million dollars from the superior and commonwealth court for the second floor—and if they are talking that type of figures, the city government and our local court system simply are not going to be able to afford them. And you have heard me on other issues, when I was down to testify on other issues, express amazement and a feeling of being perplexed and frustrated at the administration's attitude towards spending dollars for crime. There is no question that all of us in law enforcement are absolutely staggered that the military budget continues to go up and up and up at a staggering rate, but money for what Chief Justice Berger, not ex-

actly a militant liberal, has indicated is domestic defense, which he indicates in his speech is far more important to the people of Philadelphia, Senator—as you know, the scorecard over the last decade is that the Russians have killed no Philadelphians and the criminals have killed upward of 4,500.

Senator SPECTER. Freeze crime now.

Mr. RENDELL. Absolutely, and we need dollars to do it. And we are all perplexed in law enforcement, whether we be Republicans or Democrats, all of us are perplexed about the administration's propensity to go down and make tough speeches to police chiefs in New Orleans and then follow—to commission task forces which recommend spending dollars for both the Justice Assistance Act, which I know you were trying to shepherd through the Senate, and for prison construction—Senator Dole has a bill for prison construction—we could use that desperately in Philadelphia to build an additional courthouse to take care of one of our serious backlog problems. One of our serious backlog problems is because of the backlog and because of inadequate prison space, we are putting rapists out on the street, as you indicated, and they are committing more crime. If we had additional good clean prison facilities, and if we could construct those, we wouldn't have to do that, and the Dole bill seems to me to be eminently reasonable, a balanced approach—and it gets no progress because of the administration's attitudes on all these things.

So I am happy to be here, and I can talk more specifically about some things, but basically we need dollars for additional courtrooms, either short-term construction or long-term construction—and that is capital funds; we need dollars for prison construction; and we need dollars to continue special programs, like career criminal, which allow us to give a quality response in the midst of all this quantity. And if we are not talking about dollars, it seems to me that despite the good offices of you and other people, like Senator Biden and Senator Kennedy, who are concerned about the quality of justice in urban centers, despite all of that—and Senator Dole, obviously—despite all of those good intentions, we are tilting at windmills.

I heard Judge Savitt, and I was very pleased to see in his remarks that he believes now individual judge calendaring might be a long-term answer to our problems. And I believe that is essential, because it focuses judicial accountability. I think despite the tremendous strides made by Judge Bradley and Judge Savitt and Judge Cipriani—I am not familiar with the civil improvements, but from what I read, there has been great improvement there—the biggest problem still is lack of accountability of individual judges. If a judge doesn't want to work, if a judge doesn't want to put out, if a judge doesn't want to be responsive to the needs of our community, there is really no system of accountability, no adequate system of discipline, no adequate system of control. And that is despite the good intentions of everyone there.

But individual judge calendaring, it's a great idea—but I don't think, in all deference to the U.S. Senate, it can do much to persuade the court system of Philadelphia or Boston or Chicago to adopt individual judge calendaring.

Senator SPECTER. Might there be some carrot approach by the Congress to inspire——

Mr. RENDELL. Sure, the only thing that I can think of——

Senator SPECTER. Not that we want Judge Savitt to wait, but to inspire others to go to the individual judge calendaring?

Mr. RENDELL. Well, I think the only thing you could do is like you do in the drunk driving area, use some funding—I guess that's transportation funds—as an incentive to States to adopt legislation; so you could tie some funding—make funding available to local court systems to adopt something like individual judge calendaring.

Senator SPECTER. Judge Savitt testified that he believes that the judiciary is adequate in the city of Philadelphia. I think that is an accurate statement of what he said.

What's your view on that subject?

Mr. RENDELL. Well, whenever you talk about the judiciary as a whole, it's always difficult to characterize, because there are so many good men and women.

Senator SPECTER. Let me restate the question, Mr. Rendell. Let me ask it not in terms of that question, which might——

Mr. RENDELL. I was going to answer it anyway.

Senator SPECTER [continuing]. Be termed as a characterization—well, you can answer that, if you want to, in response to the next question, and that is: Do you think there is a better system available for selecting judges?

Mr. RENDELL. There's absolutely no question about it; I don't think anybody who has been in the Philadelphia judicial system, either as, for that matter, a judge, an administrator, or prosecutor or defense lawyer, can tell you that the political system plain and simple doesn't work. And every time you say that, an individual that says that is accused of being antidemocratic and whatever. But there is absolutely no way people can get adequate information about men and women running for judge.

Senator SPECTER. How would you select the judges?

Mr. RENDELL. I would select them with a merit selection system that was tied into quick retention elections, like a merit selection system and then, after 2 years of service, the judge, he or she, would under his first——

Senator SPECTER. Why not lifetime appointments?

Mr. RENDELL. Because then I think there is a total lack of accountability. I know the Federal courts have it, and they——

Senator SPECTER. But how can you ask men or women to give up their practices for 2 years and then speculate as to whether they are going to stay on the bench?

Mr. RENDELL. How can you ask someone to give up his practice to become district attorney and speculate whether he is going to have a job 4 years later?

Senator SPECTER. There's been no shortage of candidates.

Mr. RENDELL. No shortage of candidates for judge, either.

Senator SPECTER. I think there would be, of high-caliber people.

Mr. RENDELL. Not at all.

Senator SPECTER. You said for 2 years. There is a shortage of candidates even on a 10-year term of quality.

Mr. RENDELL. But I don't think the retention election is what creates the shortage of candidates. I think what creates the short-

age of candidates is, unfortunately, pay—and I echo Judge Savitt's and Judge Bradley's constant refrain that you basically get what you pay for, and I think judges ought to be paid at a higher rate of salary so that we do attract some of the better lawyers. But, too, I think many of the lawyers are discouraged because they know they have to go through the political system.

Senator SPECTER. What is the pay now for a common pleas judge?

Judge SAVITT. Fifty-five.

Mr. RENDELL. It's significantly lower than Federal court judges, significantly lower.

Senator SPECTER. Common pleas judges do not have the power, do they, to raise their own salaries?

Federal judges do, you know. The Federal judges raise their pay—the Supreme Court of the United States raised the pay in a celebrated case when the issue in a nutshell was that the Congress rescinded pay raise on September 30, and it was taken to President Ford, who signed it, effective at the start of his day, 9 o'clock in the morning, and the Supreme Court of the United States held that the interim from 12 midnight on September 30 until 9 a.m. on October 1 constituted a diminution of judicial salary while in office in violation of the Constitution.

Mr. RENDELL. Well, that's interesting, but regardless of that, I don't think that the retention—it's both pay, No. 1, and, No. 2, the political system discourages people. I know a lot of very fine men and women who would like to be judges who don't want to subject themselves to the political system. Bruce Kaufman is the best example of that; Bruce Kaufman who, everybody agreed, Republicans and Democrats alike, was a high-caliber appellate court justice, State supreme court justice, resigned rather than run for election again. He found stumping the State and going to the type of meetings that judicial candidates are forced to go to, he found it to be personally offensive and compromising to his ability to sit as a judge dispassionately and fairly and without any conflicts. He found it so bad that he didn't even choose to run for election.

I suggest to you that you could open the doors of the experienced members of the public defender, of the district attorney's office, and, to some extent now, the city solicitor's office, and find right now 20 to 30 people who would make top-caliber common pleas and municipal court judges. I don't think there is any question about that. And that is not even touching people who work at a higher salary [inaudible] than the salary available. So I think it's the poiitical system that creates the problem of lack of availability of candidates—that and the pay structure; no question that the pay is a problem.

But, again, what can the Congress of the United States do to force any system of merit selection on State judiciaries, whether it be statewide or countywide.

Senator SPECTER. Well, I think the Congress could have some effect in terms of findings and recommendations, and——

Mr. RENDELL. Well, there have been some studies of the States that have gone to merit selection, and in almost all cases everyone agrees that it is working well—the judges agree, the people agree, the Governors agree. Everyone fears that if it goes to a merit selection process, the Governors will politicize it themselves, but most

Governors, freed from the need to consult with political figures—most Governors have responded and appointed top-quality people regardless of party affiliation. And we studied this 1½ years, 2 years, ago.

To let people elect judges makes absolutely no sense. I will recall forever the day that I won the Democratic primary May 17, 1977. I ran against the candidate who was endorsed by the Democratic organization and machine and I won by approximately 76,317 votes. And that year there were 29 people who——

Senator SPECTER. What was his vote total?

Mr. RENDELL. His vote total I think was 75,000. There were 29 people running for 12 municipal court and common pleas judgeships in the primary. The party endorsed 12 of course, and there were 17 running as independents. All of the 12 party-endorsed candidates won, all of them, and the——

Senator SPECTER. Are you suggesting that your opponent's party scuttled him?

Mr. RENDELL. No, no, what I am suggesting is that at a level like district attorney or mayor or Senator or Governor, people get enough information that they can make a reasoned choice.

Senator SPECTER. State supreme court justice?

Mr. RENDELL. No, because of the canons of ethics. The canons of ethics make it impracticable to run for judicial office anyway because you are not allowed to say what you are going to do at that level, so there is no way you can make a reasoned choice. Candidates who run for supreme court justice, it's like they are running for student council president—they put on all the fraternal organizations, they put on, you know, their terms of service, but they don't say anything substantive. It would be like a district attorney running for office and not being able to express his or her views on plea bargaining. People running for the supreme court can't express their views on fundamental issues like the 6-hour rule or——

Senator SPECTER. What is your office's policy now on plea bargaining?

Mr. RENDELL. We do plea bargain, but we limit it and control it, and, as a result, in felonies it is down close to 80, 79 percent from where it was in 1977.

Senator SPECTER. What do you think that the Congress could do to help on the issue of calendar control?

Mr. RENDELL. Well, as I said, the first thing the Congress can do is to come to the big cities' aid with money for capital construction, I don't think there is any question about that.

Senator SPECTER. Short of the kind of massive funds necessary for capital construction—it may be coming in corrections, in prisons——

Mr. RENDELL. Well, that would be an enormous help.

Senator SPECTER. Well, I think that is a possibility; it's been in the tunnel for a long while.

Mr. RENDELL. The second thing is something that your office tried to do, persuade GSA to give us facilities and not sell them to developers, as simple as that. You remember Judge Cipriani talked about the need for secure juvenile facilities, you remember our efforts with your office to persuade GSA to give the State of Pennsylvania the naval home at 24th and Grey's Ferry, which would have

accommodated up to 100 juveniles who were serious problems and needed secure detention, and yet they decided to sell it to a developer to make extra amount of millions of dollars. Now, the U.S. Government can't be run totally like a business, and we have got to allocate things correctly. And that is a stated policy of the Attorney General's task force, that is something that the President mentioned in his New Orleans speech—but when it comes to concrete action, GSA is more interested in picking up $18 million from a private developer than it is in helping us with problems. GSA is, from what I understand, unwilling to cede any available space to the court system for $1 at the old Federal courthouse even though we get reports that the space is barely used—it's used for things like storage.

Senator SPECTER. District Attorney Rendell, one final question. What is your view of the controversy between Justice Flaherty and the common pleas system?

Mr. RENDELL. Well, it seems to me that any system, and particularly a system as large as ours and with the problems that beset ours, both external and internal, could stand a good healthy review. And I think if Chief Justice O'Brien had asked a professional agency like the National Center for State Courts to make a preliminary review and assessment, I think that that would have been the absolutely correct first step.

And then if that assessment indicated—an independent assessment, someone out of the political milieu, indicated that it needed to be placed in a receivership situation, then I think that that would have been an appropriate step.

I can only speak for the criminal justice system, which is just, as you know, a slice, though a significant slice, of the overall court system. And in that area my independent judgment is we do not need outside control. The progress that Judge Savitt and Judge Bradley have made over the past year is significant, and I think we are on the right road. I would like to see some changes, maybe some constitutional changes—I would like to see the president judge appointed by the Supreme Court rather than elected by his colleagues, I think that would give the president judge a lot more leeway to act strongly and independently and to order things that maybe are sometime——

Senator SPECTER. Would that require a constitutional change?

Mr. RENDELL. Yes.

Senator SPECTER. The State supreme court doesn't have that power?

Mr. RENDELL. No, only for administrative judges; it does not for president judges—that is in the State constitution.

And that is the type of change that I would like to see. But as for my aspect of the system, the criminal justice system, I do not think that it needs outside control. Obviously we could all stand studying; I am sure there are things in our office that could stand review and could stand change and recommendations, and I don't think Judge Savitt or Judge Bradley has ever contended differently.

But I would like to see that type of study. But in the criminal justice area—and, again, I am not all that familiar with the allegations of patronage or waste or things like that—I am not the con-

troller, I have all I can do to deal with the criminal case loads, I don't know enough about that to comment intelligently, Senator.

But in our area, which is probably the main concern to your committee, we don't need an outsider to come in.

Senator SPECTER. Has anyone from—has Justice Flaherty or anyone on his behalf consulted with you about the common pleas court system?

Mr. RENDELL. And the criminal section of it? No. I have written a number of letters to Justice Flaherty in which I have given reports on the progress we have made—I wrote them to Chief Justice O'Brien as well—and many times I have in those letters indicated I would be happy to sit down and talk to Justice Flaherty, assuming that that order was a fait accompli, and he communicated back to me that he intended to do so some time in the future, and never did.

Senator SPECTER. When did he communicate that to you?

Mr. RENDELL. My last communication was—I wrote a letter in April informing the chief justice of the great progress we had made in cutting into the felony backlog; I carbon-copied Justice Flaherty and Judge Savitt and Judge Bradley as well—and he communicated then that he was going to sit down and spend half a day with us, et cetera, et cetera, et cetera, but that never happened.

Senator SPECTER. Have you talked with Chief Justice O'Brien or anyone on his behalf?

Mr. RENDELL. Yes, a number of times. Shortly after I sent the letter to Chief Justice O'Brien, the week following my reelection, maybe a month and a quarter after that, we had a meeting in Chief Justice O'Brien's office—the chief, Judge Savitt, Judge Bradley, myself, the public defender, and some other people, in which we talked about these problems, and we talked about the need for resources and the changes, and Judge Bradley indicated the changes he was making of his own volition. And we agreed that those changes might bear fruit, and we agreed to set some time in April of 1982 as an oversight meeting to see how we were doing. And somewhere along the line something changed, because after that meeting in which we felt that everything had been straightened out, at least temporarily, the order appointing Justice Flaherty came down.

And it was very much of a surprise to me. And I was satisfied by the first meeting with Chief Justice O'Brien and by the volitional steps taken by Judge Bradley and Judge Savitt.

Senator SPECTER. Mr. District Attorney, thank you very much. We intend to contact Justice Flaherty and to inform him as to what the testimony has been today, and to invite his comments and observations.

Mr. RENDELL. Well, I share Judge Savitt's opinion that I think it would be beneficial for him to come down and testify and to state clearly what his point of view is, because not everything—despite what I just said, not everything that Justice Flaherty said about the court system is incorrect—and I am sure Judge Savitt would agree with that as well.

I thank you for the opportunity to come down here, and, if I can leave you with one hope, it is that you will stay after GSA for us.

Senator SPECTER. Absolutely. And thank you all very much.

[The subcommittee adjourned at 12:45 p.m.]

COURT BACKLOGS

THURSDAY, SEPTEMBER 30, 1982

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:59 a.m. in room 5110 of the Dirksen Senate Office Building, Hon. Arlen Specter (chairman, Subcommittee on Juvenile Justice) presiding.

Staff present: Jonathan Levin, legislative counsel.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen. It is 10 o'clock and we shall begin.

Today's schedule is complicated by the fact that this is the last day of the fiscal year, and the next to the last day of the Senate session. There are a great many bills which are on the calendar which have to be acted on today, including two which come out of this subcommittee, justice assistance and career criminal, which will require my attention at 11 or shortly before.

So we are beginning actually on the button or perhaps 1 minute early this morning, and we will be proceeding on this hearing as expeditiously as we can. I wanted to give you that advance notice because if we are unable to conclude shortly before 11, we will have to recess for a time until the floor business is concluded.

In my judgment, the hearing which we are having today is very important, focusing as it does on the experience of New York City on the criminal calendar. The delays in bringing cases to trial, in my judgment, are a major problem in the administration of criminal justice from two points of view: from the point of view of the defendant who is in custody without bail, awaiting trial, there are substantial delays which impinge upon the right to a speedy trial; from the point of view of the public, there are numerous instances where defendants on bail, awaiting trial, commit other acts of violence, occasioned by the failure of the criminal justice system to bring defendants to trial as promptly as it should.

Beyond those two specific concerns, there is the problem about the crowded dockets causing the kind of congestion which engenders plea bargaining, and the ultimate disposition of serious charges with probation or minor sentences, when the crimes of violence ought to be bringing very substantial jail sentences.

Based on the experience that I have had as district attorney of the city of Philadelphia, my view is that there are three essential problems in the criminal justice system. One is calendar reform; second is sentencing; third is corrections.

The problem we are taking up today is the first, chronologically, and perhaps the most important of the three issues.

This is the second in a series of hearings. We began with the problems of the city of Philadelphia, a subject that I have more intimate personal familiarity with; and there has been a history in Philadelphia of a controversy over court administration.

The second hearing focuses on New York City, which, with its enormous crime problem and backlog, is obviously the subject of inquiry compatible with the controversy which has surrounded the administration of criminal justice in New York City.

The statistics in New York are very telling. Last year New York City courts disposed of 182,109 cases, but finished only 1,189 trials, which is a sharp indication of the leverage that a defendant has in not going to trial in exchange for a guilty plea.

As of January 25, 1982, there were 10,620 felony cases pending in New York City's courts, and over 35 percent had already taken more than 6 months between indictment and trial.

I know from my days as district attorney in Philadelphia it was not an unusual occurrence to have a case go more than 18 months before trial and have as many as a dozen or more listings, to the chagrin of the witnesses and the police, and the entire criminal justice system.

We had hoped that District Attorney Morganthau would be with us for these hearings. He had evidently agreed to come and then canceled. Perhaps he can join us at a later date.

We are expecting Chief Judge Lawrence Cooke of the New York Court of Appeals to join us, but I am advised that he has been delayed by a late arriving plane.

So, at this time I would like to call the other four witnesses, and I think it would be most expeditious and lend to the best interaction if you ladies and gentlemen came forward together, Judge Betty Weinberg Ellerin, deputy chief administrative judge of New York City courts; Judge Joseph B. Williams, director, felony backlog elimination program; Mr. John F. Keenan, criminal justice coordinator for New York City; and Mr. Thomas A. Reppetto, president of the Citizens Crime Commission of New York City.

STATEMENTS OF CHIEF JUDGE LAWRENCE H. COOKE, NEW YORK COURT OF APPEALS, PRESIDENT, NATIONAL CONFERENCE OF CHIEF JUSTICES, PRESIDENT, NATIONAL CENTER FOR STATE COURTS; JUDGE BETTY WEINBERG ELLERIN, DEPUTY CHIEF ADMINISTRATIVE JUDGE, NEW YORK CITY COURTS; JUDGE JOSEPH B. WILLIAMS, DIRECTOR, FELONY BACKLOG ELIMINATION PROGRAM; JOHN F. KEENAN, CRIMINAL JUSTICE COORDINATOR, NEW YORK CITY; AND THOMAS A. REPPETTO, PRESIDENT, CITIZENS CRIME COMMISSION OF NEW YORK CITY

Senator SPECTER. Welcome, Judge Ellerin and gentlemen, we very much appreciate your being with us to shed some light on this

very important subject. And, if we may, Judge Ellerin, we will begin with you.

Judge ELLERIN. All right. Actually, this is a bit out of order. We had expected Judge Cooke to be here and to open our remarks.

Senator SPECTER. Notwithstanding the powers behind the State court of New York or even the U.S. Senate, air commuter takes precedence over everything.

Judge ELLERIN. Apparently.

So that I will give you somewhat of an overview of the situation that exists within the city of New York.

I think you pinpointed it very well, Senator, when you indicated that one of our major problems is calendar delay. And the answer to that—of the reason for that is really quite simple. There are just more indictments filed each year, and have been for the past several years, than can be handled within the 6-month period by the number of judges available.

In New York State we do have a limited number of judges. While it was recently expanded legislatively, that does not go into effect until the latter part of this year. Up until this point we have had a limited number of judges, both at the lower court level and our supreme court, which is our highest court of original jurisdiction.

Through creative measures, whereby we assign judges from one court to another, where we transfer judges from one part of the State to another—in other words, taking judges from areas where their calendars are not as crowded and bringing them into the city of New York, we have been able to, in a sense, stem the tide to some degree.

However, there has been a consistently rising trend of filing of indictments. Within the last year, for example, I believe that indictments have been up 25 percent from the year before. Of course, the courts cannot control the number of indictments that come into the court, nor can they control crime. And, of course, we are in the midst, as you know, of a burgeoning crime wave, and perhaps better police practices have assured that many criminals are now apprehended.

What we did in New York a year ago September, in recognition of the very heavy calendar backlog—and by backlog we mean cases that are more than six terms old—the felony case that is more than six terms old, is that we reallocated our judicial resources within the city by moving two-thirds of our judges to the criminal side, in an effort to deal with that very great criminal caseload.

While that was very helpful in terms of raising the level of the number of dispositions, what we found was that the number of old cases, the backlog cases, were not necessarily being reduced. The over-all number of cases was being reduced but that number of backlog cases still remained fairly standard. I think it was about a third, over a third of our total caseload.

Therefore, we recognized that it was not just enough to have additional judges, but that something more was necessary. A felony backlog reduction plan was evolved during the latter part of last year, and it went into effect on January 25, 1982, under the superb direction of Judge Joseph Williams, who is here with us today.

By the utilization of management techniques and monitoring and control, we found that we are able to reduce the old backlog cases

in very substantial numbers, and I am going to leave it to Judge Williams to give you the specifics on that.

At the same time that we were doing that, however, the indictments kept increasing, so that our over-all pending caseload continued to go up. And clearly, as far as we are concerned,we just do not have adequate resources to address all felony cases at this moment within the 6-month period. While we do expect some relief by virtue of the expanded judicial complements that will be coming to us, I believe it is an increase of 10 percent, there are other areas where, unfortunately, we have not kept pace with the 20th century; due to financial restraintsy.

For example, to digress for one moment, our court system deals not only with criminal cases, but also with civil matters that are of equal importance to our citizenry. And, of course, those calendars now have been very heavily affected by the emphasis on the criminal side.

One of my administrative judges recently complained to me: You know that my clerks have to prepare calendars by the use of carbon paper and regular typewriters. We do not, in other words, have the money for word processors and for the other technological advances that might make our job somewhat easier in terms of addressing these very heavy caseloads.

I do want to address, just for one moment, your comment with respect to the number of cases that are tried. While that number overall may be a small portion of the total felony caseload, I believe you will find that the number of trials in New York State is substantially greater than in other States.

In that regard, we are confronted with mandatory prison terms for the greatest number of our felonies. Of course, when you are dealing with mandatory prison terms, defendants take the position that they prefer to go to trial rather than to take a plea that would be an appropriate plea with an appropriate prison term. That, of course, does also add to our calendar congestion.

As I understand it, we are hopeful that perhaps we can look to this group for some assistance, and the answer that I can hold out on that is that we need whatever assistance we can get to give us the kind of 20th century resources that would make it possible for us to meet 20th century criminal caseloads.

I will now leave for Judge Williams, who, I must emphasize, has done an utterly superb job in the management of our felony backlog program, to give to you the more specific facts in terms of statistics of our cases.

Senator SPECTER. Thank you very much, Judge Ellerin.

Judge Williams, we welcome you here. You have a very impressive sounding unit, felony backlog elimination program; I am anxious to hear of its operation.

STATEMENT OF JUDGE JOSEPH B. WILLIAMS

Judge WILLIAMS. Thank you very much, and good morning, Senator.

I am certain that the most impressive thing about the entire thing is the name of the program, the felony backlog elimination program. On January 25 of this year we did implement such a pro-

gram and we had in the neighborhood of some 10,000-odd cases which had been backlogged for more than 6 months. We immediately embarked upon trying to whittle into that under the program that Judge Cooke instituted by assigning 169 judges to the criminal term of the supreme court for the purpose of coping with the large influx of felony indictments within the city of New York.

At that time the number of backlogged cases approached roughly 37 percent of the gross inventory of cases then pending within the supreme court criminal term within the city of New York.

We decided after consultation with consultants and with Judge Ellerin and others, that in order to implement the program we would try to go about it in a systematic way, in a way that had not been tried before.

We focused on trying to hold the line with respect to moving at least 25 percent of our cases to trial. Those cases that were over a year, some 25 percent, we would move with a priority. With the 50 percent of those cases that were over 180 days but less than 365 days, we would try to hold the line and at the same time cut into the backlog.

I can only say that the success that we have had has been, in some instances, good and in other instances it leaves much to be desired.

I am certain that as a district attorney you know the problems of trying to meet head-on the legal culture and all the habits and prerogatives that it has assumed in the moving of a case from indictment through trial, verdict, and sentence.

We found instances where we had little information as to; one, the actual number of backlog cases; two, what the variety and mix was. In some instances the number of cases varied from month to month in a significant way so that we had to devise other means whereby we could get a more accurate count of the number of cases that were actually pending.

Our next job was to get a handle on the question of adjournment practices and try to do something to control that in order to cut into the backlog.

Before getting to that, I would like to say one thing about the way the courts function. Actual case flow is from a calendar part to a trial part. Most cases come from the district attorney's office, after indictment from the grand jury and go into the calendar part where preliminary motions and bail applications are made. When cases are trial ready, they are referred to a trial part for trial.

We found that there were a number of cases that had been pending in the calendar part that had not been referred to trial, even though the past indictment ages were between 9 months to a year. The reasons given varied from questions of motions, adjustments for vacation, nonavailability of witnesses, and any number of other reasons that would keep a judge from referring a case for trial if he were not being monitored.

We took upon ourselves the task of monitoring these adjournments. We began by monitoring those cases that had been pending in excess of 6 months, and requiring that applications for adjournment in those cases receive prior approval from the felony backlog director.

That moved fairly well, and we were able to cut into the backlog until we got a decision that indicated that there was some question as to the constitutionality of the administrator's order. Some of the judges then used that as a means to not follow through on the monitoring procedure.

However, there was a sufficient awareness raised with respect to this question, and Judge Cooke did not relent on it. We pressed forward and tried to use the force of persuasion and appeal to the pride and real commitment of a number of judges, and we proceeded to move forward with that.

We were looking at cases where there were adjournments. I was interested in looking at some that had been pending and had at least 12 to 13 adjournments. We were looking at others with 57, even 100 adjournments, with no disposition with respect to those cases.

The reasons that were given for adjourning the cases ranged from, as I indicated, the desire of counsel or the district attorney to go on vacation, to the fact of absent witnesses, or a weak case, or the priority given by the district attorney where there were multiple cases on a particular defendant, and he had no desire to move the lesser case until after all the appellate processes had been exhausted, where there had been a conviction on the greater case there was the hope of getting a plea on the lesser case at such time as the appeals were affirmed.

In many instances these cases stayed around as open cases for better than a year without any disposition, and when we got to the point of plea the defendants would not even be, in fact, ready to consider pleading, even after they had had these very, very long prison terms. So it produced very little for us.

To further move with it, we tried to do something more with managing our cases. So we proposed to use our calendar parts to do the arraignments and then moved to specific tasks, and had all of our adjournments task-related.

The objections to trying to have adjournments task-related was that we would then go in front-to-front with a master system that had been accustomed to unlimited—just about unlimited—adjournments, and adjournments that, I dare say, were taken as a matter of course and were very rarely denied.

We then tried to fix specific dates and time limits within which all of the pretrial tasks were to be completed and try to set firm trial dates.

We are in the process now of trying to perfect the implementation of that kind of management system throughout the city of New York. We have been able to do it in four counties, and in the fifth county, New York county, we have not been able to do it. We have had limited success in the other four counties, and we still have not gotten it to the point where we can indeed say that it has been successful.

I think that it is well to mention that in the course of doing this work some interesting things have begun to come out of this exposing the number of ways that people have been using to avoid moving forward to trial.

In some instances we have taken the position that we just are not going to put up with the question of adjourning and adjourn-

ing, the so-called "touch system", and hope that a defendant will accept a plea or you can bargain out with a plea so you do not have to go to trial.

We have taken, in some instances, the position that it is the calendar judge who must get the case trial ready and then send it out to trial. That is the thing that is going to him, not the opportunity to take a plea, but the opportunity to indeed move forward to a trial.

As of this date, our efforts have had success in some areas and not so much success in other areas. We have been able to hold the line in face of the increased filing. And as to the old inventory of cases, we have been able to reduce it from approximately 35 percent of the cases that were pending as of January 25, 1982, to approximately 26 percent of the cases as of now.

Senator SPECTER. Thank you very much, Judge Williams. Very interesting. I have a number of questions, but I am going to defer them until we hear from Mr. Keenan and Mr. Reppetto.

Welcome, Mr. Keenan, you are the criminal justice coordinator of New York City. I look forward to your testimony.

STATEMENT OF JOHN F. KEENAN

Mr. KEENAN. Thank you.

Senator Specter, on behalf of Mayor Koch and the city administration, I appreciate this opportunity to discuss with you ways that we can work together to reduce calendar congestion and, in the process, make speedy and effective justice a reality.

As I think you know, Senator, I am a career law enforcement official. I served for 20 years in the New York County district attorney's office under Frank Hogan, and was chief assistant district attorney under Bob Morganthau, having been in charge of the felony trial division there and the homicide bureau there.

It is not an overstatement and it is not rhetoric to say that the tidal wave of crime has engulfed us as a nation. And there is a desperate need for Federal help in this area. Localities just cannot handle the problem without Federal aid.

In New York City we have recently taken a series of steps to restore public faith and preserve public safety in the process.

I would like briefly to outline for you some of the measures we have taken, explain what I feel remains to be done, and suggest to you, sir, how the Federal Government can assist us in managing our enormous caseload, thereby reducing crime, which is what is the important thing and what is the end goal to be achieved.

In New York we are now arresting, indicting, convicting, and imprisoning more criminals than ever before. During the 9 months from October 1, 1981, to July 1, 1982, there were 78,000 felony arrests in New York City. That is felony arrests. There were another 61,000 misdemeanor arrests, which was an increase of 14.6 percent over the comparable period the year before.

I am not even going to address myself, Senator, to the quality of life violations, the minor things that also enter into the courts. I am only addressing myself primarily to felonies.

Felony indictments have increased appreciably. They are up 19 percent in the first 32 weeks of calendar 1982. And, as you know,

New York is an indictment State, it is not a direct filing State. All prosecutions for felonies in New York State are as a result of grand jury indictments.

Last year, in New York City, there were 23,000 indictments. That was a 22-percent rise over 1980.

The figures that you have, sir, I believe, about trials and convictions relate primarily to misdemeanor cases.

In 1981 we convicted in New York City 16,464 felony defendants. That was an increase of 4,000 over the year 1980. Now, over half of those convicted in the city were sent to State prison to serve their sentences of 1 year or more.

The results of this counterattack against crime are encouraging. The first 6 months of this year showed an 8.6 reduction in serious crimes against the person in New York City. And by serious crimes against the person, I mean murder, rape, robbery, burglary, and assault. This is the first decrease in years.

That progress has been made, however, not without a significant price. It is becoming increasingly difficult for us to provide the swift, the certain, and the consistent punishment which everybody who is an expert in the area agrees will best reduce and prevent crime. Because of the sharp increase in indictments, the total number of felony cases awaiting trial in New York City rose 14 percent from January to August of this year. Over 12,000 felony defendants are currently awaiting trial in the city, and almost 3,000 already waited over 6 months.

I think most dramatic of all are the following figures. Figures can be dry, but I think that the following figures are significant. Our State prison population has more than doubled in the past decade, from a figure of 12,525 in December 1971 to 27,772 on September 1, 1982.

The capacity of the State prison system is approximately 24,000. The ranks of prisoners swelled by 4,000 inmates in 1981 alone, and by more than 1,600 in the first 26 weeks of 1982.

New York State now has almost as many prison inmates as does the entire Federal system. The city jail at Rikers Island and the jails in Brooklyn, the Bronx and Queens County, which house pretrial detainees and short-term sentenced prisoners on misdemeanor cases, now have 9,900 inmates, approximately 110 percent of capacity.

The recent upsurge in jail or prison population is due to increased police activity, more indictments and less plea bargaining.

We have done our best to cope. The criminal court in Manhattan, thanks to the combined efforts of Judges Ellerin, Williams, our office and the police department and the Manhattan district attorney's office, is now open for arraignment 24 hours a day, 7 days a week.

Judges Ellerin and Williams have addressed themselves to the comprehensive felony backlog reduction program. The number of completed felony trials in the city rose 30 percent from 1980 to 1981. And the average time from indictment to trial was reduced slightly in 1981.

But those felony cases, of roughly 23,000 felony cases we were still able to try only 2,344 felony indictments to trial. That is a lot

better than the national average, a little better than 10 percent and, as you know, sir, the national average is around 5.

At the urging of Mayor Koch and Chief Judge Cooke, the State legislature did give us 45 more judges, effective January 1, 1983, to hear criminal cases.

In the past year, in the city, we have added approximately 1,000 beds to our local jail capacity, and we will add more next year.

The budgets of the police department, the district attorney's office and the legal aid societies have increased, all its city expense and their staff has been increased.

We have also asked the State legislature to make substantial changes in the law to help us accelerate the criminal justice process.

These include adoption of the Federal method of jury selection, in which judges and not lawyers——

Senator SPECTER. Excuse me just 1 minute.

Mr. KEENAN. Certainly.

[Discussion off the record.]

Senator SPECTER. Excuse me. Please go on.

Mr. KEENAN. Certainly, Senator.

As I was saying, we have called the State legislature to permit judicial voir dire, which is the Federal system, which would save a lot of time. We have also called for reclassification of certain misdemeanors, so that all cases can be tried by judges instead of by juries at the misdemeanor level.

There is a limit to how much our overburdened and underfinanced State and local systems can expand. Crime is a national problem and we need a responsible Federal commitment to help solve it.

It is tragic that the Federal outlays for law enforcement personnel and grants to State and local governments have actually declined in the face of the epidemic of crime which threatens our security at home.

The Federal Government has helped local law enforcement in the past——

Senator SPECTER. Mr. Keenan, are you to the point in your recommendations for Federal assistance?

Mr. KEENAN. Yes, sir.

Senator SPECTER. OK. Fine. Could you enumerate those for me, because we are starting to run late.

Mr. KEENAN. Sure. I would suggest, Senator, that there be strong enforcement of the drug laws. The Federal role in narcotics enforcement is tremendously important. Poppies do not grow in Central Park. Drugs are brought in from out of the country. There are four Coast Guard cutters assigned to the New York area, three of them have been moved to Florida.

Senator SPECTER. Mr. Keenan, I agree with you on that point. What is your next point?

Mr. KEENAN. The next point is something dear to your heart, career criminal programs. We agree on that. I think there has to be a Federal commitment to auto theft. There were over 100,000 automobiles stolen in New York City last year, 100,951.

Senator SPECTER. I agree.

Mr. KEENAN. OK.

Senator SPECTER. If you mention something I disagree with, I will interrupt you.

Mr. KEENAN. All right, sir. I do not think you are going to disagree then, terribly. We need more prison space. We need help funding the prison space. We need Federal lands that can be turned over to the State in order to create prison space. This is desperately needed.

I think the rest of my recommendations are included in my written statement, which I submitted to your aide.

Thank you very much, sir.

Senator SPECTER. That will be made part of our record. Thank you very much, Mr. Keenan.

[The prepared statement of Mr. Keenan follows:]

Prepared Statement of John F. Keenan

MR. CHAIRMAN, SENATORS, ON BEHALF OF MAYOR KOCH AND THE CITY ADMINISTRATION, I APPRECIATE THIS OPPORTUNITY TO DISCUSS WITH YOU WAYS WE CAN WORK TOGETHER TO REDUCE CALENDAR CONGESTION AND, IN THE PROCESS, MAKE SPEEDY, EFFECTIVE JUSTICE A REALITY. I CANNOT OVEREMPHASIZE THE IMPORTANCE OF THE TASK. CRIME, WITH THE FEAR AND FRUSTRATION IT ENGENDERS, MAY BE THE SINGLE GREATEST CONCERN OF THE PEOPLE OF THIS COUNTRY. VIOLENCE KNOWS NO BOUNDARIES. IN EVERY STATE, IN GREAT METROPOLISES, IN THE SUBURBS OR IN RURAL AMERICA, AMONG ALL RACIAL, ETHNIC, SOCIAL AND ECONOMIC GROUPS, THE TIDAL WAVE OF CRIME HAS ENGULFED US. THAT IS WHY THERE IS A DESPARATE NEED FOR FEDERAL HELP. LOCALITIES JUST CANNOT HANDLE THE PROBLEM WITHOUT FEDERAL AID.

IN THE FACE OF THIS FRIGHTENING ASSAULT ON OUR DOMESTIC TRANQUILITY, WE HAVE A CRIMINAL-JUSTICE PROCESS WHICH TOO OFTEN CONTRIBUTES TO PEOPLE'S UNDERSTANDABLE LACK OF CONFIDENCE IN GOVERNMENT'S ABILITY TO PROTECT THEM. WE HAVE RECENTLY TAKEN A SERIES OF STEPS IN NEW YORK TO RESTORE PUBLIC FAITH AND PRESERVE PUBLIC SAFETY IN THE PROCESS. I WOULD LIKE BRIEFLY TO OUTLINE SOME OF THESE MEASURES, EXPLAIN WHAT I FEEL REMAINS TO BE DONE, AND SUGGEST HOW THE FEDERAL GOVERNMENT CAN ASSIST US IN MANAGING OUR ENORMOUS CASELOAD; THEREBY REDUCING CRIME.

IN NEW YORK WE ARE NOW ARRESTING, INDICTING, CONVICTING AND IMPRISONING MORE CRIMINALS THAN EVER BEFORE. DURING THE NINE MONTHS FROM OCTOBER, 1981 TO JULY, 1982, FELONY ARRESTS IN NEW YORK CITY ROSE TO 78,000. ANOTHER 61,000 MISDEMEANOR ARRESTS WERE MADE, AN INCREASE OF 14.6% OVER THE COMPARABLE PERIOD LAST YEAR. I DO NOT EVEN MENTION THE VARIETY OF MINOR BUT NONETHELESS IMPORTANT "QUALITY OF LIFE" OFFENSES WHICH ENTERED THE SYSTEM DURING THIS TIME.

FELONY INDICTMENTS HAVE INCREASED APPRECIABLY, UP 19% IN THE FIRST 32 WEEKS OF CALENDAR 1982. LAST YEAR, THERE WERE 23,000 INDICTMENTS IN NEW YORK CITY, A 22% RISE OVER 1980. IN 1981, WE CONVICTED 16,462 FELONY DEFENDANTS, AN INCREASE OF 4,000 OVER 1980. OVER HALF OF THE CONVICTS WERE SENT TO STATE PRISON TO SERVE THEIR SENTENCES OF ONE YEAR OR MORE.

THE RESULTS OF OUR SUSTAINED COUNTERATTACK AGAINST CRIME ARE HEARTENING. THE FIRST SIX MONTHS OF THIS YEAR SHOWED AN 8.6% REDUCTION IN SERIOUS CRIMES AGAINST THE PERSON. I MEAN MURDER, RAPE, ROBBERY, BURGLARY AND ASSAULT. THIS IS THE FIRST DECREASE IN YEARS.

THIS GRATIFYING PROGRESS HAS NOT BEEN WITHOUT A PRICE. IT IS BECOMING INCREASINGLY DIFFICULT FOR US TO PROVIDE THE SWIFT, CERTAIN AND CONSISTENT PUNISHMENT WHICH ALL EXPERTS AGREE WILL BEST REDUCE AND PREVENT CRIME. BECAUSE OF THE SHARP INCREASE IN INDICTMENTS, THE TOTAL NUMBER OF FELONY CASES AWAITING TRIAL IN NEW YORK CITY ROSE 14% FROM JANUARY TO AUGUST THIS YEAR. OVER 12,000 FELONY DEFENDANTS ARE CURRENTLY AWAITING TRIAL IN NEW YORK CITY, AND ALMOST 3,000 HAVE ALREADY WAITED SIX MONTHS OR MORE.

OUR STATE PRISON POPULATION HAS MORE THAN DOUBLED IN THE PAST DECADE FROM 12,525 IN DECEMBER, 1971 TO 27,772 ON SEPTEMBER 1,1982. THE CAPACITY OF THE STATE PRISON SYSTEM IS APPROXIMATELY 24,000. THE RANKS OF PRISONERS SWELLED BY 4,000 IN 1981 ALONE, AND BY MORE THAN 1,600 IN THE FIRST 26 WEEKS OF 1982. NEW YORK STATE NOW HAS ALMOST AS MANY PRISON INMATES AS THE ENTIRE FEDERAL SYSTEM. THE CITY JAIL[redacted]RIKERS ISLAND AND THE JAILS IN BROOKLYN, THE BRONX AND QUEENS, WHICH HOUSE PRETRIAL DETAINEES AND SHORT-TERM SENTENCED PRISONERS, NOW HAVE 9,900 INMATES, APPROXIMATELY 110% OF CAPACITY. THE RECENT UPSURGE IS DUE TO INCREASED POLICE ACTIVITY, MORE INDICTMENTS AND LESS PLEA-BARGAINING.

WE HAVE DONE OUR BEST TO COPE. THE CRIMINAL COURT IN MANHATTAN IS NOW OPEN FOR ARRAIGNMENTS 24 HOURS A DAY.

CHIEF JUDGE COOKE AND JUDGE EVANS HAVE EXPLAINED THE COMPREHENSIVE FELONY BACKLOG REDUCTION PROGRAM. THE NUMBER OF COMPLETED FELONY TRIALS IN THE CITY ROSE 30% FROM 1980 to 1981, AND THE AVERAGE TIME FROM INDICTMENT TO TRIAL WAS REDUCED SLIGHTLY,BUTWEWERE STILL ABLE TO TRY ONLY 2,344 FELONY CASES LAST YEAR. AT THE URGING OF MAYOR KOCH AND CHIEF JUDGE COOKE, THE STATE LEGISLATURE GAVE US 45 MORE JUDGES NEXT YEAR TO HEAR CRIMINAL CASES.

WE HAVE DRAMATICALLY IMPROVED PRISONER PRODUCTION AND ARE MOVING TOWARD A CITY-WIDE SPLIT CALENDAR SYSTEM IN WHICH CASES WILL BE SCHEDULED FOR THE MORNING AND THE AFTERNOON. IN THE PAST YEAR, WE HAVE ADDED APPROXIMATELY 1,000 BEDS TO OUR LOCAL JAIL CAPACITY, AND WE WILL ADD MORE NEXT YEAR. POLICE, DISTRICT ATTORNEYS AND LEGAL AID SOCIETY STAFFS HAVE ALL BEEN INCREASED AT CITY EXPENSE.

WE HAVE ALSO ASKED THE STATE LEGISLATURE TO MAKE SUBSTANTIAL CHANGES IN THE LAW TO HELP US ACCELERATE THE CRIMINAL-JUSTICE PROCESS. THESE INCLUDE ADOPTION OF THE FEDERAL METHOD OF JURY SELECTION, IN WHICH JUDGES AND NOT LAWYERS QUESTION PROSPECTIVE JURORS, AND THE RECLASSIFICATION OF CERTAIN MISDEMEANORS SO THAT MORE CASES CAN BE TRIED BY A JUDGE INSTEAD OF A JURY.

UNFORTUNATELY, THERE IS A LIMIT TO HOW MUCH OUR OVERBURDENED AND UNDERFINANCED STATE AND LOCAL SYSTEM CAN EXPAND. CRIME IS A NATIONAL PROBLEM AND WE NEED A RESPONSIBLE FEDERAL COMMITMENT TO HELP SOLVE IT.

IT IS TRAGIC THAT FEDERAL OUTLAYS FOR LAW ENFORCEMENT PERSONNEL AND GRANTS TO STATE AND GOVERNMENTS HAVE ACTUALLY DECLINED IN THE FACE OF THE EPIDEMIC OF CRIME THREATENING OUR SECURITY AT HOME. THE FEDERAL GOVERNMENT HAS HELPED LOCAL

LAW ENFORCEMENT IN THE PAST, AND I KNOW THAT THE MEMBERS OF THIS COMMITTEE DO NOT WANT TO ABANDON THE WAR ON CRIME. THE JUSTICE ASSISTANCE ACT OF 1982, WHICH THE JUDICIARY COMMITTEE HAS ALREADY APPROVED, IS A MODEST -- BUT POSITIVE -- STEP IN THE RIGHT DIRECTION.

LET ME OUTLINE SOME OF THE OTHER WAYS THE FEDERAL GOVERNMENT CAN SATISFY ITS OWN OBLIGATION TO PROTECT THE PUBLIC, PARTICULARLY IN REGARD TO CALENDAR CONGESTION AND SPEEDIER JUSTICE. THESE INCLUDE RESOURCES FOR ONGOING, EFFECTIVE PROGRAMS; MORE VIGOROUS PROSECUTION OF NARCOTIC OFFENDERS AND INTERSTATE STOLEN-CAR OPERATIONS; AND ADDITIONAL PRISON SPACE.

FEDERAL FUNDS HAVE ALREADY HELPED NEW YORK CITY DEVELOP AND MAINTAIN IMPORTANT AND SUCCESSFUL CRIME-FIGHTING PROJECTS, LIKE VICTIMS SERVICES PROGRAMS, POLICE TRAINING, SPECIAL ANTI-CRIME UNITS, COMPUTER SYSTEMS AND CAREER-CRIMINAL PROGRAMS. MANY OF THESE HAVE HAD A DIRECT, POSITIVE IMPACT ON COURT BACKLOGS. LEAA GRANTS IN THE EARLY 1970'S ENABLED US TO IMPROVE COURT CALENDARING PROCEDURES IN SUPREME, CRIMINAL AND FAMILY COURTS. GRANTS TO OUR VICTIMS SERVICES AGENCY HELPED DEVELOP APPEARANCE CONTROL PROCEDURES, TO INSURE THAT POLICE AND CIVILIAN WITNESSES WERE AVAILABLE WHEN NEEDED SO THAT ADJOURNMENTS COULD BE REDUCED. SPECIAL COURTROOMS WERE FINANCED WITH FEDERAL FUNDS TO TRY LONG-TERM DETAINEES. COMPUTER PROGRAMS HAVE HELPED IMPROVE CASE MANAGEMENT AND ACCELERATE TRIALS.

ONE OF THE MOST IMPORTANT FEDERAL FINANCIAL CONTRIBUTIONS HAS BEEN IN THE AREA OF CAREER-CRIMINAL PROGRAMS. LEAA HELPED TO START MAJOR OFFENSE BUREAUS IN OUR DISTRICT ATTORNEYS'OFFICES. THESE UNITS HAVE BEEN CONTINUED WITH STATE AND CITY FUNDS. OTHER SPECIALIZED BUREAUS WHICH CONCENTRATE ON CAREER CRIMINALS, ORGANIZED CRIME CASES AND HOMICIDE INVESTIGATIONS RECEIVED FEDERAL GRANTS. OUR POLICE ANTI-CRIME

UNITS, WHICH FOCUS ON VIOLENT STREET CRIMES, GREW OUT OF A FEDERALLY FINANCED PROJECT.

AS THE MEMBERS OF THIS COMMITTEE HAVE NOTED ON MANY OCCASIONS, THE RECOGNIZED FAILURES OF LEAA DO NOT EXCUSE THE ABANDONMENT OF A FEDERAL ROLE IN LOCAL LAW ENFORCEMENT. PROJECTS LIKE THOSE JUST MENTIONED MUST BE MAINTAINED, AND WITH A MODEST INVESTMENT WE CAN CONTINUE TO REAP SUBSTANTIAL DIVIDENDS IN PUBLIC SAFETY. THIS IS WHERE THE FEDERAL GOVERNMENT BELONGS.

IT WOULD BE TRAGIC, TOO, IF IN THE RUSH TO AVOID THE MISTAKES OF THE PAST, THE CONGRESS IGNORES THOSE PROGRAMS WHICH ARE ALREADY BEING MAINTAINED BY LOCAL GOVERNMENTS AT GREAT FINANCIAL HARDSHIP. WE CAN STILL USE YOUR HELP.

TWO PARTICULAR AREAS WHERE THE FEDERAL GOVERNMENT COULD HAVE A SUBSTANTIAL IMPACT ON OUR CASE BACKLOG ARE NARCOTICS AND AUTO THEFTS. THE DIMENSIONS OF OUR NATIONAL DRUG ABUSE AND DRUG-RELATED CRIME PROBLEM ARE STAGGERING. HEROIN USERS MAY BE RESPONSIBLE FOR AS MUCH AS 25% OF ALL PROPERTY CRIMES IN THE UNITED STATES, AT ENORMOUS COST TO CITIZENS. MANY ADDICTS COMMIT 200 OR MORE SERIOUS CRIMES, AND ONE STUDY IN BALTIMORE FOUND THAT LESS THAN 300 ADDICTS COMMITTED OVER 500,000 CRIMES DURING AN ELEVEN YEAR PERIOD. THE PLAGUE OF ILLEGAL DRUGS IS AN ASSAULT FROM BEYOND OUR BORDERS, AND IT IS FUNDAMENTAL THAT ONLY THE FEDERAL GOVERNMENT CAN STOP IT. POPPIES DON'T GROW IN CENTRAL PARK.

THE RECENT SUCCESS OF THE SOUTH FLORIDA TASK FORCE IS EVIDENCE OF THE UNIFIED, COORDINATED EFFORT WE DESPERATELY NEED ON A NATIONAL LEVEL. WHILE THE FLOW OF DRUGS TO FLORIDA HAS BEEN REDUCED, SMUGGLERS HAVE TURNED TO NEW YORK, WHERE THE DRUG ENFORCEMENT ADMINISTRATION HAS ONLY 250 AGENTS ASSIGNED TO THE ENTIRE STATE. THREE OF THE FOUR ANTI-DRUG COAST GUARD CUTTERS NORMALLY BERTHED IN NEW YORK CITY ARE NOW IN FLORIDA. FEDERAL DRUG ENFORCEMENT

BUDGET AND PERSONNEL ALLOCATIONS HAVE NOT KEPT UP WITH THE INFLUX OF HEROIN AND OTHER NARCOTICS TO OUR SHORES.

THE FEDERAL GOVERNMENT MUST MOUNT A MASSIVE CAMPAIGN TO INTERDICT THE DRUG TRADE THROUGH A COMBINATION OF ADEQUATELY FUNDED ENFORCEMENT EFFORTS AND THROUGH TOUGH DIPLOMATIC INITIATIVES IN NARCOTICS-PRODUCING COUNTRIES. STOP THE FLOW OF DRUGS, AND ARREST, CONVICT AND IMPRISON THE DRUG IMPORTERS, AND THE IMPROVEMENT IN COURT CONGESTION, AND MORE IMPORTANT IN PUBLIC SAFETY, WILL BE DRAMATIC.

A SIMILAR CONCERTED EFFORT IS NEEDED WITH RESPECT TO STOLEN CARS. BECAUSE OF THE UNDERSTANDABLE NEED TO PROTECT CITIZENS FROM VIOLENT CRIME, WE HAVE BEEN UNABLE TO GIVE ALL THE ATTENTION WE SHOULD TO AUTO THEFT. LAST YEAR, 100,951 CARS WERE REPORTED STOLEN IN NEW YORK CITY. THE POLICE MADE 8,922 ARRESTS, BUT ONLY 41 OFFENDERS WERE SENT TO JAIL. WE HAVE JUST DOUBLED THE POLICE DEPARTMENT'S AUTO CRIME DIVISION, BUT WE WILL BE HARD-PRESSED TO FIND THE COURTROOMS OR THE PRISON SPACE TO MAKE A SIGNIFICANT DENT IN THIS CRIME. CAR THEFT IS NO LONGER THE PROVINCE OF THE YOUNG JOYRIDER. IT IS A SOPHISTICATED, HIGHLY-PROFITABLE, INTERSTATE BUSINESS.

THE TOTAL VALUE OF THE CARS STOLEN IN NEW YORK CITY LAST YEAR WAS JUST UNDER $400 MILLION, AND IT IS ESTIMATED THAT AT LEAST 25% OF THESE CARS WERE TRANSPORTED OUT OF STATE OR TO FOREIGN COUNTRIES. MOST OF THE REST WERE TAKEN TO "CHOP SHOPS" WHERE THEY WERE DISASSEMBLED. THE PARTS WERE THEN SOLD, OFTEN IN OTHER STATES, AND ALWAYS FOR HIGH PRICES. THIS ORGANIZED CRIMINAL NETWORK CAN ONLY BE BROKEN UP BY THE FEDERAL GOVERNMENT, OPERATING ACROSS JURISDICTIONAL BOUNDARIES AND WITH THE USE OF FEDERAL CONSPIRACY AND RACKETEERING LAWS. THIS IS A CLASSIC INTERSTATE LAW-ENFORCEMENT PROBLEM WHICH DEMANDS A FEDERAL SOLUTION.

FINALLY, I HAVE ALREADY DOCUMENTED THE EXTRAORDINARY PRESSURE ON OUR STATE AND LOCAL CORRECTIONAL SYSTEMS. AS

CRIME HAS GROWN, WE'VE INTENSIFIED OUR EFFORTS TO CATCH AND CONVICT MORE CRIMINALS. BUT UNLESS WE CREATE BADLY-NEEDED PRISON SPACE, OUR RHETORIC ABOUT GETTING TOUGH WITH CRIMINALS IS JUST SO MUCH HOT AIR. WE HAVE MANAGED SO FAR, WITHOUT A SIGNIFICANT PRISON UPRISING OR THE COURT-ORDERED RELEASE OF INMATES, BUT WE ARE STRETCHING OUR FISCAL, FINANCIAL AND CAPITAL RESOURCES TO THE LIMIT. MOREOVER, OUR PRISONS ARE FILLED WITH SERIOUS OFFENDERS. FIFTY EIGHT PER CENT OF THE STATE PRISON INMATES HAVE BEEN CONVICTED OF SO-CALLED VIOLENT FELONY OFFENSES. CONSIDERATION OF INMATE RELEASES OR ALTERNATIVES TO PRISON FOR THESE OFFENDERS IS IMPRACTICAL AND DANGEROUS.

EVERYONE WHO HAS STUDIED THE PROBLEM, INCLUDING THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME, HAS AGREED THAT THE FEDERAL GOVERNMENT MUST MAKE ABANDONED MILITARY BASES AND OTHER SURPLUS FEDERAL AREAS AVAILABLE TO STATES AND LOCALITIES FOR USE AS CORRECTIONAL FACILITIES. WE ARE PLEASED THAT THIS PROCESS HAS BEGUN IN NEW YORK STATE. HOWEVER, I BELIEVE THAT THE FEDERAL GOVERNMENT MUST GO FURTHER AND ALSO ASSIST US WITH THE LARGE CAPITAL OUTLAYS NEEDED TO BUILD MORE PERMANENT PRISONS. IT IS IN THE NATIONAL INTEREST TO REMOVE CHRONIC AND VIOLENT CRIMINALS FROM OUR STREETS, AND YOU CAN MAKE NO BETTER INVESTMENT THAN TO HELP US BUILD SECURE, HUMANE PLACES TO PUT THEM.

IN SHORT, I AM NOT ASKING YOU TO THROW MONEY AWAY IN A VAGUE AND PROBABLY VAIN EFFORT TO SOLVE COMPLEX PROBLEMS. I HAVE SPOKEN TODAY ABOUT SPENDING MONEY ON PROGRAMS THAT HAVE WORKED AND WILL WORK. THE CAUSES OF CRIME ARE COMPLEX VARIED. BUT WE HAVE AMPLE EVIDENCE THAT RELIEF IS AVAILABLE IF WE HAVE THE WILL TO SEEK IT OUT. SOLUTIONS TO CRIME DO NOT COME CHEAPLY, BUT ONE OF THE MAIN REASONS FOR THE CREATION OF OUR FEDERAL GOVERNMENT WAS "TO INSURE DOMESTIC TRANQUILITY." WE OWE IT TO A TERRORIZED PUBLIC TO USE A FAIR SHARE OF FEDERAL RESOURCES TO LESSEN DOMESTIC VIOLENCE IN OUR SOCIETY.

Senator SPECTER. Mr. Thomas Reppetto, president of the Citizens Crime Commission of New York City. Welcome, Mr. Reppetto. We are pleased you are here.

STATEMENT OF THOMAS A. REPPETTO

Mr. REPPETTO. Good morning, Senator.

I think, Senator, you are very familiar with Citizens Crime Commissions from your work in Philadelphia. We are part of the National Association of Citizens Crime Commissions.

I have a formal statement for the record, which describes our commission, but since you are familiar with the concepts I think I will skip that.

Senator SPECTER. We shall put that in the record in full, Mr. Reppetto.

Mr. REPPETTO. Some of my material has already been covered here. I might just go over a few major points, Senator, and if you would like me to elaborate on those points, please feel free to say so.

I will mention the problem of securing reliable data on our court operations. A number of advisory commissions, to the Governor, legislative commissions, and city council studies have said that our criminal justice information system, despite a great infusion of funds and much effort, still is very unsatisfactory. I have the citations in my statement, from the various reports. This is a very important problem.

We see it in the crime commission when we try to study the implementation of specific laws, particularly those related to guns and bail, where we have been involved. We often have to do hand tallies, to send staff out, and to enlist the support of people in the courts and in the district attorney's office, who are themselves, busy, to go through lots of records. Surely by now we should have advanced far beyond the hand tally stage.

I must say to you, Senator, that we strongly support the career criminal programs. You are well aware of them, you are voting on them today. I just can't resist mentioning a study in Manhattan, one county in New York City which projected that 3,150 offenders were responsible for approximately 107,000 offenses in a single year.

Our commission looked at the Manhattan district attorney's office and found there were——

Senator SPECTER. 350 and 107——

Mr. REPPETTO. 3,150 individuals. This is a study done by Inslaw for the Manhattan district attorney, which said 3,150 offenders were responsible for 107,000 offenses in a single year.

We looked at the district attorney's program, which was then prosecuting about 400 career criminals annually, and found that they could prosecute 1,887 additional cases if given the resources. They were, in fact, given resources. Mr. Keenan alluded to that. In conjunction with the New York City police department, they have had a very successful program against these career criminals.

As a group, the career criminals averaged 12 previous arrests and 8 convictions, yet in half the cases they got their first jail sentences as a result of this program.

As Mr. Keenan indicated, for the first time in some years we have had a significant drop in index crimes, such as robbery and burglary; some knowledgeable officials feel that the career criminal program, along with others, has been a major cause for this reduction.

Senator SPECTER. Judge Cooke has just arrived. Judge, would you just step forward? We have begun. We understand your plane problem. Just step forward and have a chair.

As soon as you have a chance to catch your breath, we will call on you.

Judge COOKE. Thank you.

Mr. REPPETTO. I think another problem that has caused delay in the courts is an unusual situation. Our main jail is on an island many miles from our courthouses. The crime commission has supported a city-State plan, whereby the State could lease Rikers Island and make it a State prison and give the city $200 million for jails. That plan collapsed in the financial negotiations between city and State and also some local communities opposed jails in their neighborhood.

I might—just to speed up—mention some of the issues that the crime commission has looked at. We have examined the problem of jury selection. A study by some professors at the John Jay College of Criminal Justice found that, in the State supreme court, the judges spent about a third of their trial time, or 2½ days, selecting a jury as compared to 2 hours in Federal court.

We have joined with the mayor and others in urging the Federal system of jury selection.

Another key problem is that of bail. A study in Manhattan found that 25 percent of people arrested for crimes were already out on bail for a previous crime.

As a result of that, in 1981 the legislature passed, and the Governor signed, an amendment to the criminal procedure law, which authorized judges to order a defendant held without bail if he is rearrested for a class A or violent felony while already at liberty on a prior felony arrest. A hearing is required. The law went into effect on July 27, 1981. In April 1982 we conducted a survey in five counties of New York City, one of those hand tally surveys. We were unable to locate one instance of this law being utilized, in a 9-month period.

Clearly when one-fourth of the defendants in criminal cases jump bail, and many of them simply disappear, it is obvious this is going to cause enormous delays and defeat the ends of justice; not to mention the fact that these individuals frequently commit new crimes while on bail.

Let me give you some of the things that we consider are priorities.

First, of course, is the continuing efforts that are required to develop a management information system. This seems to be a problem, not only in New York but elsewhere.

Second is the problem of repeat offenders. Federal support for programs against career criminals have borne fruit, but the logical complement to this approach is a similar effort against fugitives. Here I do not mean interstate fugitives of the type the FBI has tra-

ditionally pursued but people who simply jump bail and fail to show up in court while they go on with their criminal careers.

A few months ago it was revealed that Federal agents and the New York City Police Department had secretly organized a special task force to apprehend 300 fugitives wanted for serious crimes such as murder, armed robbery, and drug dealing. Within a few weeks the task force managed to capture half of the targeted offenders.

Surprisingly, many of them were captured in their homes or their usual hangouts. Despite the fact that they were wanted on serious charges, which, upon conviction, could bring them long prison sentences, they did not flee to foreign countries, they did not change their names and hide in a remote corner of the United States. Why should they? The New York City Police Department is so overburdened, they have little time to pursue most of them. At the beginning of the year, the police department had nearly 250,000 fugitive warrants outstanding in New York City. Given the success of this Federal-local pilot program, we urge that it be expanded into a major effort.

An improvement in the system of criminal justice will go a long way toward restoring the economic health and social fabric of our city and other cities in the United States. We of the Citizens Crime Commission highly commend your committee for your efforts in this area.

Senator SPECTER. Thank you very much, Mr. Reppetto. Very interesting testimony.

[The prepared statement of Mr. Peppetto follows:]

Prepared Statement of Thomas A Reppetto

I appreciate the invitation to testify before the United States Senate Judiciary Committee on the problems of court administration in New York City. The Citizens Crime Commission is a private, non-partisan group, supported by contributions from the business community. We are modeled after the original Crime Commission created in Chicago in 1919 and are affiliated through our national association with commissions in approximately 20 other cities and states.

We maintain a professional staff which studies crime and criminal justice and reports our findings to the public. Our objective is to find ways to reduce crime, particularly violent crime, and to improve criminal justice. We do not study the civil aspects of court administration.

At the outset, let me state two basic views of the Crime Commission. We believe that swift and certain justice is a greater deterent to crime than is severe punishment, especially if the latter is reserved for the unlucky few. I must report that in our judgement punishment is neither swift nor certain in New York City. Nor could it be characterized as severe. For example, only about one in three murder cases results in a defendant being imprisoned and usually the time served is about four years.

A second view that the Commission espouses is that the criminal justice system, including the courts, should be operated for the public, not for officials or what several panels of distinquished New York City attorneys have characterized as "the local legal culture."

In assessing the criminal justice system of New York City we must note that it is fragmented and that there is a paucity of reliable data. The City is divided into two judicial departments and five counties each with its own courts. As yet there is no adequate information system which can track cases through the criminal justice process, nor provide meaningful and timely summaries of the overall performance of various agencies including the courts. In 1979 an advisory commission to the Governor said,

> For example, it is impossible to know how many people were arrested during the past year for first-degree robbery; what percentage of these were recidivists, and what prior crimes they were convicted of; how many individual arrests led to an indictment, and what became of the other arrests; what is the recidivism rate for persons placed on probation, as opposed to those given jail or prison terms... Incredibly, it is impossible to track a single felony arrest through the entire process of prosecution, conviction, and sentencing, which deprives us of the ability to assess what happens after arrest, or why.

In 1980 a state legislative committee noted that the two major state agencies responsible for the collection and disemination of information were incapable of presenting an accurate state wide picture or of even producing statistical reports in spite of spending over six million dollars in federal funds and four and a half years in development.

In 1981 another advisory committee to the Governor said,

> The history of criminal justice information systems in New York State bears an altogether too similar resemblance to the biblical story of the Tower of Babel. Despite a sizeable infusion of federal funds in the last decade to computerize various criminal justice agencies, there is little if any coordination in the information systems.

In 1982 the New York City Council president reported that delays in installing a city wide computer system to keep tabs on criminal cases have contributed to an "information crisis" resulting in court backlog, the release of suspects because criminal law deadlines are not met, and prison overcrowding.

We would also note that no organization monitors the courts on a regular basis. Thus it is difficult to assess performance and pinpoint responsibility. Indeed, when our staff has attempted to monitor the implementation of specific laws such as those relating to such vital matters as guns and bail, it has been necessary to engage in hand tallies of court records in the various counties. For example, in April of this year, we broke the news to officials that a highly touted new law devised to combat repeat offenders had apparently never been invoked.

Therefore I must strongly emphasize: (1) that it is difficult to make precise statements about problems and solutions in our state criminal courts; and (2) the need for major improvements in our criminal justice information capabilities.

If we look at the daily reality of our criminal justice system we can, however, highlight some of the problems in our courts and suggest some possible remedies. In a typical year in New York City, there are about 180,000 criminal arrests, 100,000 of them for felonies. But only about 20,000 felony arrests result in indictments. This number has increased over recent years, but clearly there are many more cases that could be processed as felonies but are not. In general the reason they are not is that the system lacks the resources to accommodate them.

For example, a very successful program has been one which concentrates on career criminals. I know this committee is well aware that a relatively small number of offenders commit a disproportionate share of serious crimes. For example, a study in Manhattan projected that 3,150 offenders were responsible for approximately 107,000 offenses in a single year.

In 1981 our Commission determined that the Manhattan District Attorney's Office, which was prosecuting about 400 career criminals annually, could actually prosecute 1,887 additional cases if given the resources. Shortly afterwards, several million dollars in New York State funds were made available to police and District Attorneys to expand career criminal programs. Since then hundreds of these individuals have been arrested, prosecuted and convicted in New York City. As a group they averaged twelve previous arrests and eight convictions yet in at least half the instances they received their first jail sentence as a result of this program. While we cannot relate a specific level of crime to an individual program, it is interesting that for the first time in several years we have had a significant drop in robbery and burglary in New York City. Some knowledgeable officials feel that the career criminal program has been a major cause of this reduction. Thus the additional resources were well worth the cost.

While the Crime Commission can highly commend the career criminal programs, it is more difficult to assess the need for additional resources in our courts. On the one hand we note that in the criminal courts, the lower courts that handle routine criminal cases, a report by a state commission observed that judges average fifty cases a day and some process more than one hundred. According to the Commission a premium is placed on quick dispositions. In general less than 1% of the thousands of cases filed in criminal court result in an actual trial. In Manhattan, it currently takes several days just to arraign a defendant. To alleviate this situation the courts have instituted virtually a 24 hour schedule.

At the Supreme Court level, where indictments are disposed of, there is generally a backlog of about 10,000 cases, 40% of them pending six months or longer. The foregoing would suggest

that more judges and other court personnel are necessary. However, some persons disagree with this assessment and argue for better management and organization of the courts. They would note a 1977 study which indicated that the average State Supreme Court Justice in New York City spends only about three hours of a six hour day hearing cases. They would also point to incidents such as occured before Labor Day in 1981 when a high administrative judge paid a surprise mid-day visit to one of our county courthouses and found it packed with citizens, but empty of officials.

The Commission, based on its own observations and analyses, has taken a middle position supporting some increases in personnel in the court as well as changes in organization and management. I will detail some specifics.

One example of a management problem is the difficulty in getting prisoners from the jail to the courtroom. Those who are held in custody pending trial usually end up in Rikers Island, a facility which is many miles from most of our county courthouses. Often a fully staffed courtroom sits empty because the prisoners have not arrived.

Much of the delay in processing prisoners could be alleviated by the construction of jail facilities adjacent to courthouses. The Citizens Crime Commission has repeatedly supported such proposals, including an eminently sensible plan to lease Rikers Island to the State for $200 million dollars and use the money for local jails. However, both state and city reneged on the deal and various local communities opposed locating jails and prisons in their neighborhoods.

Once the prisoner is actually ready to be processed by the courts, the system really begins to break down. A committee

of the Association of the Bar of the City of New York has characterized the process as one of "glacial delay" and has placed primary blame on the "local legal culture." The chief judge of the State of New York has reported an average of fifteen adjournments in Supreme Court criminal cases. Anyone who is knowledgeable about the administration of criminal justice knows that it is to the advantage of the defense to delay a case. Witness become discouraged, victims may be intimidated, and important evidence may be lost. The chief judge therefore imposed a rule requiring that any more than six adjournments be approved by an administrative judge but this has been resisted by other judges.

In fairness to defense attorneys the Commission has found that in some counties, the system discourages participation by the private bar. Indeed, in Bronx county one court-appointed private lawyer may have 100 cases in one arraignment part. The reason for this is that few lawyers wish to serve on 18b (court appointed defense) panels because the Bronx is distant from their offices nor are the fees particularly attractive. Thus another means of combatting delays is to find ways to increase the pool of private lawyers in defense work.

Another area of concern is judicial assignment. In the last few years the chief judge has assigned judges from upstate and from civil parts to hear cases in New York City. Many lawyers and judges have been unhappy with this but our Commission has felt it was necessary. Judges of the lower city courts have also been assigned as acting Supreme Court Justices. Las year the Chief Judge announced that these acting justices would be rotated. Therefore they would, in effect, be demoted in salary and duties. These acting justices were used in the busy calendar and felony parts, that is the key positions in

the Supreme Court. The general opinion of knowledgeable groups such as the City Bar Association, the Legal Aid Society, the Trial Lawyers Association, and district attorneys -- organizations that do not always agree -- is that these acting justices have been well selected and have performed in a competent manner. Therefore they opposed the rotation as did the Citizens Crime Commission. We could not understand why the plan was implemented given all the other problems in the courts. Indeed we characterized it as reshuffling the deck chairs on the Titanic. Implementation of the plan resulted in lengthy litigation and submission of a new plan, the effect of which is as yet unclear.

The Commission has also taken up the question of bail, and jury selection; both of which contribute to court delays. A 1979 study found that one-fourth of new arrests in Manhattan were for crimes that were committed by persons who were out on bail awaiting trial on charges resulting from prior arrests. Incidently this was the highest percentage of any city studied by a national research group. Our Commission highlighted this finding, and in 1981 the legislature passed and the Governor signed an admendment to the criminal proceedure law. It authorized judges to order a defendant held without bail if he is rearrested for a Class A or a violent felony while already at liberty on a prior felony arrest. Before the defendant can be held under this statute he is entitled to a hearing. The law went into effect on July 27, 1981. In April 1982, a survey conducted by the Commission in New York City was unable to locate one instance of this law being utilized. Thus the revised New York Bail Statute was of little practical consequence.

When one-fourth of the defendants in criminal cases can simply disappear, it is obvious that this is going to cause enormous

delays and defeat the ends of justice, not to mention the fact that these individuals frequently commit new crimes while on bail.

In 1981, a study by a group of professors at the John Jay College of Criminal Justice found that the judges of criminal parts in the Supreme Court of New York City spent approximately two and a half days or one-third of their trial time per case presiding over jury selection. This compares with an average of two hours in the federal courts. In the state system, lawyers conduct the examination of jurors. In the federal system voir dire is conducted by the judge.

Under the present system defense attorneys frequently use voir dire as a means of indoctrinating prospective jurors on the merits of their case. Jurors also complain of a waste of time during this selection process and in some instances that they are subjected to embarrassingly personal and irrevalent questions. Opponents of the judicial selection of jurors argue it interferes with the defendants right to a fair trial. The Commission is not persuaded that the federal system is less fair than our state courts.

The selection of the jury is important both in terms of fair trial and of economical use of court resources. The federal system meets both requirements and we have urged its adoption.

One could go on and on with problems of the New York State criminal justice system. They are myriad and exacerbated by the tendency of each segment to blame the other. For example, there is the problem which arise from the need for a probation report before sentencing. Until last year, it took an average of eight weeks to produce this report. As a result judges blamed the Probation Department for delays

in sentencing. Then the Mayor ordered the City Probation Department to speed up the process to an average of two weeks. Judges then complained that the reports were inadequate. In the meantime, with the average probation officer's caseload near two hundred, and the need to spend more of his or her time preparing pre-sentence reports, supervision of offenders -- the rationale for probation -- has become virtually non-existent.

Two important priorities emerge from the commissions analysis of New York State court administration. The first is the need for a management information system which will enable officials and public alike to assess workload and performance for the system and its components. Despite large expenditures over several years, this has not been achieved. Yet this need not be so in a country which possesses such sophisticated information technology. Other jurisdictions face similar problems such as New York. Therefore a federal lead in this matter would be of enormous value to State criminal justice efforts.

Secondly a problem which plagues New York and, I suspect, other jurisdictions is that of repeat offenders. Federal support for programs against career criminals have borne fruit, but the logical complement to this approach is a similar effort against fugitives. By this I do not mean interstate fugitives, but people who simply jump bail and fail to show up in court while they go on with their criminal careers.

Recently it was revealed that federal agents and the New York City Police Department had secretly organized a special task force to apprehend 300 fugitives wanted for serious crimes such as murder, armed robbery, and drug dealing.

Within a few weeks the task force managed to capture half of the targeted offenders.

Surprisingly, many of them were captured in their homes or usual hangouts. Despite the fact that they were wanted on serious charges, which upon conviction could bring them long prison sentences, they did not flee to foreign countries or attempt to hide under a false name in some remote corner of the United States. Why should they? The number of fugitives is so great that the overburdened police have little time to pursue most of them. At the beginning of this year the New York City Police Department had nearly 250,000 fugitive warrants outstanding. Given the success of the pilot program, the Commission would urge that it be expanded into a major effort.

An improvement in the system of criminal justice will go a long way toward restoring the economic health and social fabric of New York City and other communities. The Citizens Crime Commission therefore urges this committee to place a high priority on the aforementioned problems as it proceeds in its deliberations.

Senator SPECTER. I welcome Chief Judge Cooke. We have begun. We have heard everyone. Your entry was very timely. We very much appreciate your taking the time to come today.

As I had said earlier, this is a particularly problemsome day. We had not anticipated it, in scheduling which is involved on our calendar control, as on yours, and there are two bills up later this morning, at about 11; one is the justice assistance act, where we are on the verge of renewing the best of the LEAA programs, which would be of enormous interest to you men and women; and second, a Federal armed career criminal statute.

But the matter of calendar control is one of enormous importance and we are very pleased that you all came today, but especially you, Chief Judge Cooke, considering the very heavy demands which we know are on your time.

Welcome. We will be pleased to hear from you.

STATEMENT OF CHIEF JUDGE LAWRENCE H. COOKE

Judge COOKE. Yes. Thank you, Senator Specter.

If you would at any time feel you have to go, please feel free to do it, and we will be glad to wait until you come back.

Senator SPECTER. That time may arise, I hope it will not, but we will proceed until I am summoned.

Judge COOKE. There are huge numbers of cases, both criminal and civil, awaiting trial in the courts of the metropolitan areas of this country. The situation is one of grave concern. It is time for serious thinking, plain talk, and solid, if not courageous, measures.

It is appropriate that the U.S. Senate Committee on the Judiciary, and specifically the Subcommittee on Juvenile Justice, examine the problem of backlogs in State and local courts. We appreciate having this opportunity to contribute to the detailed record from which the Senate Judiciary Committee can design a program to assist the States in bringing remedies to their beleaguered judicial systems.

The preamble of the Constitution lists the establishment of justice as the very first of its purposes after the formation of the Union itself. Madison extolled justice as "the end of government" and Woodrow Wilson saw "a constitutional government as being as good as its courts; no better, no worse."

State courts handle over 96 percent of the Nation's judicial business; they are of corresponding importance. The New York State court system is one of the largest, busiest, and most expensive in the Western World. It embraces about 3,350 judges and 9,500 nonjudicial officials. Approximately 1,000 judges serve in the trial courts of record. To their credit, they and a few hearing examiners each year handle more than 2 million actions, proceedings, and indictments. This figure does not include cases heard in the town and village courts, which also run into the millions.

Since becoming chief judge of the State of New York on January 2, 1979, every effort has been made to address and reduce the backlog in both the civil and criminal parts of supreme court, New York's court of general jurisdiction.

For instance, when civil cases were backlogged in the supreme court in the fall of 1979, and some areas were reporting delays of as much as 5 years in getting their cases tried after notes of issues were filed, we announced a three-pronged plan to reduce congestion.

First, 242 judges were transferred from the least busy to the most busy courts, to establish 396 additional supreme court trial parts in the State's 11 largest counties. We have a total of 62 counties in the State.

To accommodate these transfers, approximately 600 reassignments and cross assignments were necessary statewide. Complicating the situation was the fact that in New York we have the ridiculous number of 11 different trial courts and constitutional limits on the number of judgeships that can be created in any geographical area.

Second, judicial vacations were made a uniform 4 weeks a year, whereas the previous vacation policy had allowed 6 or 7 weeks a year.

In addition, uniform court hours were established requiring courts to open by 9:30 in the morning and to remain in session until approximately 5 in the afternoon.

The third prong expanded an arbitration program from a 4-county demonstration project to a total of 21 counties, now up to 28 counties. And the program's jurisdictional monetary limit was increased from $4,000 to $6,000.

As a result of the first two prongs of the plan, the supreme court's pending civil caseload in New York City dropped by 35.5 percent during 1980 alone, in one year. The number of cases pending over 15 months there decreased by 43 percent.

The total backlog in the State decreased 22 percent.

The third prong, the arbitration program, in only its second year of operation, disposed of 23,600 civil matters in 1981.

The criminal side of the court system suffers from similar pressures. In early 1981, there was a sharp increase in indictments in New York City, as in other parts of the State. And in March of that year we began applying two-thirds of all supreme court resources in New York City to criminal cases. At peak, 169 judges were assigned to hear felony cases in the city of New York.

Following the announcement of the plan to transfer these resources to meet the increasing criminal caseload, and after discussion between Mayor Edward Koch of the city of New York and myself, Mayor Koch was instrumental in the appropriation of an additional $6.5 million from the city's hard-pressed resources for city-funded agencies, such as the district attorney, the Letal Aid Society, and the department of corrections, whose workload would grow with the trial of more cases.

The mayor also pledged the required support staff of the city were provided with more permanent court parts. In addition, the city began a $6 million capital construction program to expand and enhance courtroom space for criminal trial parts throughout the city.

I believe you have already heard from Mr. Keenan, the mayor's criminal justice coordinator.

Over a year ago, about one-third of those defendants scheduled for court appearances on any particular day would be brought from jail before the start of that court day, by the city's department of corrections. One-third only.

Moreover, many of those jailed defendants who were delivered to court were not brought before a judge that day. And the cooperative effort between the department of corrections and court administration has solved both our problems.

Today nearly 95 percent of the department's incarcerated defendants are being delivered on time, and a few proceedings are being delayed or adjourned because the defendant was not produced.

In addition, each defendant summoned to court now sees a judge who is able at least to explain the status of the defendant's case.

In March 1981, Mayor Koch and the city's department of probation started a presentence investigation report project to reduce the number of defendants being held in the city's jail while awaiting sentence. By cutting the report preparation time to 3 weeks from as much as 6 weeks or more, in just 2 months the department was able to cut in half the number of convicted prisoners awaiting sentence. The courts have cooperated by scheduling sentencing dates to coincide with this improved performance; consequently, there are shorter adjournments between convictions and sentenc-

ings, in the savings of many millions of dollars to the city of New York.

In the fall of 1981, we asked the National Center for State Courts and the Institute for Court Management to evaluate the processing of criminal cases in New York City. It was reported that as of October 4, 1981, 4,653 felony cases, or 41.5 percent of the total, were pending more than 6 months from indictment; that number had increased by 1,122 during the first 9 months of 1981 despite the increased efforts; that the average number of appearances per disposition was to what we thought a shocking 14.8. One case had been adjourned as many as 114 times. During 1 month we found that courtrooms went unused 39 percent of the time.

We were upset——

Senator SPECTER. Judge Cooke, that is the most astounding thing I have heard in a series of revelations of my experience in the city of Philadelphia, which has a population of 2 million, 160 assistant D.A.'s when I left, 45 trial courtrooms, 15 juvenile courtrooms, more than 70 courtrooms in operation in each day; but I never heard of continuances to the range of 114 times, was it?

Judge COOKE. That was the largest number, yes.

Senator SPECTER. The most I ever saw was in the low thirties. When we got into the twenties we thought we had an extraordinary monster.

How could a case be continued that often? It must have been around for 5, 6, 7, 8 years.

Judge COOKE. Many of the cases were adjourned without giving any reason. We had one man go into one court, and supposedly one of the better courts, one of the better parts. There were 20 applications in 1 day; 17 were granted, and as I recall it, the information was that there had been no reason assigned, but it was, you know, sometimes the legal culture is easy on itself. We felt that this was an excessive number of times, 14.8 was the average.

Numbers were 50, 60, 70 times, and we have done something about it, I might say, Senator. We made the condition of our criminal calendars our No. 1 priority, and we have restructured our criminal case backlog reduction program in New York City, under the leadership of Deputy Chief Administrative Judge Betty Weinberg Ellerin, with Justice Joseph B. Williams as project director.

It is based on closer case management and control, more complete case information, and on limiting adjournments. We have had the supervision of the National Center for State Courts in this effort.

Its eventual goal is the routine processing of every felony case to disposition within 135 days of indictment, except for sentencing. Judges Ellerin and Williams will tell you, if they have not already, of the progress of these efforts.

We are pleased that the figures that will be given, or have been given to you today, show some improvement.

For example, I understand that the older cases are down now by 22 percent since the first of this year. We have introduced a rule whereby we attempt to have all adjournments handled by a special calendar part, and that our goal is not to have more than five adjournments in any one case. By closer case management, which is our system now, we feel that this can be accomplished.

There is much need for continued effort and concentration. Our appreciation has to be extended, and is extended, to the judicial leaders, the trial judges, the nonjudicial personnel of the unified court system, members of the mayor's staff, and officials of the correction and probation departments who have been so supportive.

I now wish to address the larger questions posed by this hearing: how did this backlog arise, and what can the Federal Government do to assist State courts in handling the vast numbers of cases coming into the system?

The underlying causes of the increased litigation must be left probably for sociologists to determine, but the fact remains that there has been a flood or tremendous proportion of both civil and criminal cases coming to the courts for resolution. The volume of work addressed in the court system in New York City is simply staggering.

Let me use just the figures for the full year of 1981. The civil cases filed in the Supreme Court in New York City numbered 26,498. The judges disposed of 26,636 cases, and had a pending caseload at the end of 1981 of 16,758.

In the criminal parts, 22,796 cases were filed, the judges disposed of 22,783 cases, and there was at year's end a pending caseload of 10,778. In the New York City Criminal Court, where most pregrand jury felonies are filed and where all misdemeanor and violation cases are sent, a total of 189,051 matters were filed during 1981, the judges disposed of 182,109 cases, and at year's end there was a pending caseload of 15,269.

We have striven with "might and main," we have been innovative, we have been nonpolitical, we have instituted a sizable number of programs, and we have sought the best advice available, we have been guided in many instances by court management experts from the National Center for State Courts. We desire to continue our march forward, but it is not at all easy.

You and I, you of the Federal and I of the State complex, must not be complacent. We must not dismiss these afflictions as plagues on the houses of the States. Under the U.S. Constitution, State courts share with Federal courts the awesome responsibility of enforcing that Constitution and the statutes enacted thereunder. With increasing frequency, Congress is relying on the State judiciaries to implement its policies and enactments in areas such as civil rights, clean air standards, welfare, and unemployment insurance eligibilities, school lunch programs, and even speed limits.

Moreover, we are witnessing attempts to narrow Federal court jurisdiction that would divert increasing numbers of cases to the State courts. Perhaps the most significant increase in the burden imposed on the State justice system, both in volume and complexity, has come from the U.S. Supreme Court decisions extending the procedural due process protections into civil, criminal, juvenile, and mental health proceedings.

As Justice Brennan observed in a 1977 issue of the Harvard Law Review:

> Although courts do not today substitute their personal economic beliefs for the judgments of our democratically elected legislatures, Supreme Court decisions under the Fourteenth Amendment have significantly affected virtually every other area,

civil and criminal, of state action. They have significantly altered the work of state court judges.

In addition to this increase in procedural due process cases, Congress is now considering legislation to channel thousands of so-called diversity jurisdiction cases from the Federal to the State courts. In New York City alone, based on the Federal diversity caseload of 1978, it has been estimated that it would increase our State's civil caseload by approximately 8,000 cases per year.

Especially if Congress seeks to divest Federal courts of some of their jurisdiction, now is the time for the Federal Government to come forward and help the States meet the demands of the burgeoning caseloads. This assistance can take the form of special grants for such innovative programs as arraignments by closed-circuit television, for court sessions outside of regular business hours, for advanced technology in computer-tracking of cases, and for optimum use of court staff and facilities. Funds could be used for research, demonstration, education, training and national clearinghouse programs.

Finally, there is a crying need for the State Justice Institute. The Conference of Chief Justices has enthusiastically supported its creation and you of the Senate have passed it, but it now drifts in the House. It would help furnish the study and planning that must form the basis of lasting court improvement. This institute would assist in solving the organizational problems posed by our system of federalism. It would result in greater harmony between the Federal and State judicial systems. It would relieve tensions caused by what is viewed as unwarranted interference with State court determinations. It would foster an appreciation of the heavy burdens borne by the States. Opportunities would be afforded for cross-pollination of judicial thinking and for an appraisal of innovations.

Society demands court reform and modernization. The need is pervasive, existing in the large and small States alike, in urban and rural regions.

As the chief judge of one of the largest judicial systems in the Nation for nearly 4 years, I can tell you that the path is uphill and it is mine. If it is to be traversed, there must be advance study of the route and a firm determination to resist powerful and relentless exertions for diversion and a tough enough hide to fend off the arrows of personal attack.

In the words of the late respected, one of the great reformers, court reformers, of all time, Chief Justice Arthur T. Vanderbilt of New Jersey, "Judicial reform is no sport for the short-winded."

[Prepared statement of Judge Cooke follows:]

PREPARED STATEMENT OF CHIEF JUDGE LAWRENCE H. COOKE

There are huge numbers of cases, both criminal and civil, awaiting trial in the courts of the metropolitan areas of this country. The situation is one of grave concern. It is time for serious thinking, plain talk, and courageous measures. It is appropriate that the United States Senate Committee on the Judiciary, and specifically the Subcommittee on Juvenile Justice, examine the problem of backlogs in state and local courts. We appreciate having this opportunity to contribute to the detailed record from which the Senate Judiciary Committee can design a program to assist the states in bringing remedies to their beleaguered judicial systems.

The preamble of the Constitution lists the establishment of justice as the very first of its purposes after the formation of the Union itself. Madison extolled justice as "the end of government" and Woodrow Wilson saw "a constitutional government [as being] as good as its courts; no better, no worse."

State courts handle over 96 percent of the nation's judicial business; they are of corresponding importance. The New York State court system is one of the largest, busiest and most expensive in the western world. It embraces about 3,350 judges and 9,500 non-judicial officials. Approximately 1,000 judges serve in the trial courts of record. To their credit, they and a few hearing examiners each year handle more than two million actions, proceedings, and indictments. This figure does not include cases heard by the town and village justice courts.

Since becoming Chief Judge of the State of New York on January 2, 1979 every effort has been made to address and reduce the backlog in both the civil and criminal parts of Supreme Court, New York's trial court of general jurisdiction. For instance, when civil cases were backlogged in the Supreme Court in the Fall of 1979, we announced a three-pronged plan to reduce

congestion. First, 242 judges were transferred from the least busy to the most busy courts to establish 396 additional Supreme Court trial terms in the State's 11 largest counties. To accomplish these transfers, approximately 600 reassignments and cross-assignments were necessary statewide. Complicating the situation was the fact that in New York we have the ridiculous number of 11 different trial courts and constitutional limits on the number of judgeships that can be created in any geographical area. Second, judicial vacations were made a uniform four weeks a year, whereas the previous vacation policy had allowed six or seven weeks a year. In addition, uniform court hours were established requiring courts to open by 9:30 a.m. and to remain in session until about 5:00 p.m. The third prong expanded an arbitration program from a four-county demonstration project to a total of 28 counties. The program's jurisdictional monetary limit was increased from $4,000 to $6,000.

As a result of the first two prongs of the plan, Supreme Court's pending civil caseload in New York City dropped by 35.5 per cent during 1980. The number of cases pending over 15 months decreased by 43 per cent. The third prong, the arbitration program, in only its second year of operation, disposed of 23,600 civil matters in 1981.

The criminal side of the court system suffers from similar pressures. In early 1981, there was a sharp increase in indictments in New York City. In March of that year, we began applying two-thirds of all Supreme Court resources in New York City to criminal cases. At peak, 169 judges were assigned to hear felony cases.

Following the announcement of the plan to transfer these resources to meet the increasing criminal caseload, and after discussion between Mayor Edward Koch of the City of New York and myself, Mayor Koch was instrumental in the appropriation of an additional $6.5 million from the city's hard-pressed resources for city-funded agencies -- such as the District

Attorneys, the Legal Aid Society, and the Department of Correction -- whose workload would grow with the trial of more cases. The Mayor also pledged the required support staff if the City were provided with more permanent court parts. In addition, the City began a $6 million Capital Construction Program to expand and enhance courtroom space for criminal trial parts throughout the City. Mr. John Keenan, the Mayor's Criminal Justice Coordinator, will also be addressing you.

Over a year ago, only about one-third of those defendants scheduled for court appearances on any particular day would be brought from jail before the start of that court day by the City's Department of Correction. Moreover, many of those jailed defendants who were delivered to court were not brought before a judge that day. A cooperative effort between the Department of Correction and court administration has solved both problems. Today, nearly 95 per cent of the Department's incarcerated defendants are being delivered on time and few proceedings are being delayed or adjourned because the defendant was not produced. In addition, each defendant summoned to court now sees a judge who is able at least to explain the status of the defendant's case. You will also hear from Benjamin Ward, the Commissioner of Correction for New York City.

In March 1981, Mayor Koch and the City's Department of Probation started a Presentence Investigation Report Project to reduce the number of defendants being held in the city's jail system while awaiting sentence. By cutting the report preparation time to three weeks from as much as six weeks or more, in just two months the Department was able to cut in half the number of convicted prisoners awaiting sentence. The courts have cooperated by scheduling sentencing dates to coincide with this improved performance; consequently, there are shorter adjournments between convictions and sentencings.

In the Fall of 1981, we asked the National Center for State Courts and the Institute for Court Management to evaluate

the processing of criminal cases in New York City. It was reported that, as of October 4, 1981, 4,653 felony cases, or 41.5 per cent of the total, were pending more than six months from indictment; that the number had increased by 1,122 during the first nine months of 1981 despite the increased efforts; that the average number of appearances per disposition was 14.8; and that, during one month, courtrooms went unused 39 percent of the time.

We were upset and we did something about it. We have made the condition of the criminal calendars our number one priority. We have restructured our Criminal Case Backlog Reduction Program in New York City under the leadership of Deputy Chief Administrative Judge Betty Weinberg Ellerin, with Justice Joseph B. Williams as Project Director. It is based on closer case management and control, more complete case information, and on limiting adjournments. Its eventual goal is the routine processing of each felony case to disposition within 135 days of indictment, except for sentencing. Judges Ellerin and Williams will tell you of the progress of these efforts. We are pleased that the figures that will be given to you today show some improvement. There is much need for continued effort and concentration. Our appreciation is extended to the judicial leaders, trial judges, non-judicial personnel of the Unified Court System, members of the Mayor's staff, and officials of the Correction and Probation Departments who have been so supportive.

I now wish to address the larger questions posed by this hearing: how did the backlog arise, and what can the Federal government do to assist state courts in handling the vast numbers of cases coming into the system.

The underlying causes of the increased litigation must be left for sociologists to determine, but the fact remains that there has been a flood of tremendous proportion of both civil and criminal cases coming to the courts for resolution. The volume of work addressed in the court system in New York City is simply staggering. Let me use just the figures for the full year of

1981. The civil cases filed in State Supreme Court in New York City numbered 26,498. The judges disposed of 26,636 cases and had a pending caseload at the end of 1981 of 16,758. In the criminal parts. 22,796 cases were filed, the judges disposed of 22,783 cases, and there was at year's end a pending caseload of 10,778. In New York City Criminal Court -- where most pre-grand jury felonies are filed and where all misdemeanor and violation cases are sent -- a total of 189,051 matters were filed during 1981, judges disposed of 182,109 cases and at year's end there was a pending caseload of 15,269.

We have striven with "might and main", we have been innovative, we have been non-political, we have instituted a sizeable number of programs, we have sought the best advice available, we have been guided in many instances by court management experts from the National Center for State Courts. We desire to continue our march forward but it is not at all easy.

You and I, you of the Federal and I of the state complex, must not be complacent. We must not dismiss these afflictions as plagues on the houses of the states. Under the United States Constitution, state courts share with Federal courts the awesome responsibility of enforcing that Constitution and the statutes enacted thereunder. With increasing frequency, Congress is relying on the state judiciaries to implement its policies and enactments in areas such as civil rights, clean air standards, welfare and unemployment insurance eligibilities, school lunch programs and even speed limits. Moreover, we are witnessing attempts to narrow Federal court jurisdiction that would divert increasing numbers of cases to the state courts. Perhaps the most significant increase in the burden imposed on the state justice systems, both in volume and in complexity, has come from the United States Supreme Court decisions extending the procedural due process protections in criminal, civil, juvenile and mental health proceedings.

As Justice Brennan observed in a 1977 issue of the Harvard Law Review:

> Although courts do not today substitute their personal economic beliefs for the judgments of our democratically elected legislatures, Supreme Court decisions under the fourteenth amendment have significantly affected virtually every other area, civil and criminal, of state action. * * * [T]hey have significantly altered the work of state court judges * * *.

In addition to this increase in procedural due process cases, Congress is now considering legislation to channel thousands of so-called "diversity cases" from the Federal to the state courts. In New York City alone, based on the Federal diversity caseload of 1978, it has been estimated that it would increase our state's civil caseload by approximately 8,000 cases per year.

Especially if Congress seeks to divest Federal courts of some of their jurisdiction, now is the time for the Federal government to come forward and help the states meet the demands of the burgeoning caseloads. This assistance can take the form of special grants for such innovative programs as arraignments by closed-circuit television, for court sessions outside of regular business hours, for advanced technology in computer-tracking of cases, and for optimum use of court staff and facilities. Funds could be used for research, demonstration, education, training and national clearing-house programs.

Finally, there is a crying need for the State Justice Institute. The Conference of Chief Justices has enthusiastically supported its creation and you of the Senate have passed it but it now drifts in the House. It would help furnish the study and planning that must form the basis of lasting court improvement. The Institute would assist in solving the organizational problems

posed by our system of federalism. It would result in greater harmony between the Federal and state judicial systems. It would relieve tensions caused by what is viewed as unwarranted interference with state court determinations. It would foster an appreciation of the heavy burdens borne by the states. Opportunities would be afforded for cross-pollination of judicial thinking and for an appraisal of innovations.

Society demands court reform and modernization. The need is pervasive, existing in the large and small states alike, in urban and rural regions. As the Chief Judge of one of the largest judicial systems in the nation for nearly four years, I can tell you that the path is uphill and laden with hazards. If it is to be traversed, there must be advance study of the route and a firm determination to resist powerful and relentless exertions for diversion and a tough enough hide to fend off the arrows of personal attack. In the words of the late Chief Justice Arthur T. Vanderbilt of New Jersey, "Judicial reform is no sport for the short winded."

Senator SPECTER. Well said, Chief Judge Cooke.

Let me pick up on the latter part of your testimony, Chief Judge Cooke, as to Federal support.

You enumerated some items where the Federal Government might be of assistance on grants, arraignment by TV, judicial overtime. If you had your first priority, what would you like to see the Federal Government do on the issue of calendar control, speeding up disposition of criminal cases in the State courts?

Judge COOKE. One of the first things I would like to see, and the reason I say it is one of the first things is because I think it is the easiest thing that the Federal Government can do, is to go through with the creation of the State Justice Institute, which has been advocated by the Conference of Chief Judges now for many years. And which will study improvements which can be made, cross-pollinate judicial ideas and bring about greater harmony with the——

Senator SPECTER. Former Chief Justice Hal Heflin of the Alabama Supreme Court talked to me last night about including that in the justice assistance program, and we are going to include it. That is going to be accepted, whether it will survive conference, which we hope for later today, I do not know.

Judge COOKE. Yes.

Senator SPECTER. What is No. 2 on your agenda?

Judge COOKE. Well, No. 2, I think we need funds with which we can extend our programs. The States, unfortunately, in a way New York did it——

Senator SPECTER. What would you use the money for?

Judge COOKE. Well, I would use the money for, as I told you, arraignments by closed-circuit video tape, or closed-circuit television. Between the place of detention and the court where a person is being arraigned. That would decrease delay.

We are having problems right now in New York City about people coming into a court for arraignment sometime as long as 3 days after the arrest. It is not the fault of the court system. We were available, and before anybody can come under the court's jurisdiction, the case must be started, there must be an action brought, there must be something filed, and we cannot reach out into a place where somebody might be detained or be investigated until a charge is made, until they are brought into court.

But one thing we have done, and this is to the great credit of our judges in New York City, we now have all-night arraignments, so that there can be no excuse for not coming into court as promptly as possible. As far as the courts are concerned.

Senator SPECTER. Are you saying that there is a geographical problem that the defendants are in custody in one place and the judge is in another?

Judge COOKE. Well, usually the defendants are in Rikers Island. They could be in the custody of some police department, too. Or in Staten Island.

And in some various, as I say, police precincts.

Senator SPECTER. And you are saying it is expensive to bring them from the point where they are in custody to where a judge is?

Judge COOKE. Well, they have not been brought in on time, in many instances. I think now——

Senator SPECTER. In order to comply with the rules about immediate arraignment, prompt arraignment?

Judge COOKE. That is right. That is one of the things. We feel that we in the court system have done our part.

Senator SPECTER. You mentioned Federal funding to stimulate court overtime. What do you have in mind on that?

Judge COOKE. Well, I think in your family courts.

Senator SPECTER. That the Federal Government should pay the cost to get judges to work overtime?

Judge COOKE. Yes; I think that could be if we could get more judges, more judge time. I think if we could have it in family court. It is a great thing to have courts beyond the working hours.

Senator SPECTER. Saturday sessions or evening hours?

Judge COOKE. Yes, absolutely. It has worked well. I used to be a children's court judge, which is essentially the same as a family court, and it worked like a charm with the working father or working mother who did not have to lose their pay. And also it was convenient for people, as a rule.

I think it could be done—we have a very busy housing court in New York City, where hundreds of thousands of cases come in, and we think if they could be extended over a larger number of hours, it would be much more convenient for many tenants and even landlords who are beleagured.

Senator SPECTER. Chief Judge Cooke, you testified as some length about some 200 or more judges transferred on reassignments or cross-assignments, and there has been an extensive amount of publicity on the controversy relating to this reassignment issue. Where do you stand on that now?

Judge COOKE. Well, we right now—it has become accepted more by the judiciary than ever before. It has been recognized as one of the great blessings of court reform. It is something that chief judge from New Jersey, Chief Judge Vanderbilt said was at the heart of court administration, was the ability to transfer cases.

Senator SPECTER. Are you restricted now in your capacity as chief judge of the highest State appellate court in making transfers?

Judge COOKE. Well, I do not know that we are——

Senator SPECTER. As I read the newspapers, you are; but is that wrong?

Judge COOKE. We are not really restricted now. There was a difficulty, there was a claim, and I do not yield to the fact, I do not think it was ever settled, because this had been operating for 20 years. I feel that the case that was brought—it has been decided against us, but now we have the authority of the court of appeals in our State, which gives us more or less the power to transfer the judges. That was a power that involved, in the *Morganthau* case, was merely involved in New York City. This was a transfer throughout the State, which has worked, as you see, the figures show it worked very well.

If you would like to go into the reasons why——

Senator SPECTER. Are you saying that you have the power to transfer throughout the State but not throughout the city?

Judge COOKE. Oh, yes, we have the power to transfer throughout the State and in the city.

Senator SPECTER. What did the *Morganthau* case you denominated stand for?

Judge COOKE. Well, that was a transfer within the judges of the criminal court and the civil court to the supreme court in New York City. And the New York City is the only place where there are criminal court judges by name criminal court, and civil court judges by name. In the upstate areas there is the supreme court, there is the county court, there is the court of claims and a number of other courts. In all we have 11—that is one of our problems—11 different courts. We have seven major trial courts. We have——

Senator SPECTER. But your court held that there was a limitation on reassignment among the——

Judge COOKE. Well, they said that we had to have standards. They said that we have to have standards. Now, there was much authority to indicate there was no need for standards. But it was litigated and it was decided against.

Then the court of appeals approved the standards that I submitted. So we have authority now.

Senator SPECTER. So you have cleared that hurdle?

Judge COOKE. Yes, we have.

Senator SPECTER. And you have made reassignments.

Judge COOKE. I would be glad to tell you the reasons why we made the assignments in New York. You see, the problem was not

the question of the authority to make assignments, the question was whether or not there should be a screening process. We favored a screening process. We did not think it——

Senator SPECTER. You wanted to select judges who had the talent——

Judge COOKE. On merit. On merit.

Senator SPECTER [continuing]. To dispose of criminal cases? On merit.

Judge COOKE. Yes, sir, right. On merit. We wanted it done on merit and not by some haphazard way or method. We did not feel that——

Senator SPECTER. And you then adopted standards, and those standards have been approved by your board?

Judge COOKE. They have

Senator SPECTER. And you now transfer in accordance with those standards, at your discretion?

Judge COOKE. That's right. Well, we do not want to abuse the discretion. I mean, you can abuse it, as you know. I speak as a lawyer.

There were certain abuses. Some people were made an acting supreme court judge for as much as 10 years, 12 years. Others were never given the opportunity. And we tried to find the reason why they were so assigned, and we did not have any answer given to us. So, we said there should be a screening process where all would have the opportunity. And do it on merit.

Senator SPECTER. Has District Attorney Morganthau acceded to the current procedures and standards?

Judge COOKE. I do not know of any opposition on his part. I might say that the overall State transfer, I do not want to forget that, that it is so accepted today, Senator Specter, that we have volunteers, enough to fill our quotas.

Senator SPECTER. How long have the new standards been in effect?

Judge COOKE. Let's see, I think it was since last June, sometime in June.

Senator SPECTER. So, you have had several months to work on it.

Judge COOKE. Well, yes.

Senator SPECTER. Nobody has raised a question and there have been many reassignments?

Judge COOKE. Yes. Of course, the assignments are a little bit different, the assignment overall picture, the big picture, is different than merely the question of assignments from civil and criminal court in New York to the Supreme Court.

There were some other things you were talking about before where money could be used, and of course we feel that the computers would be a great thing, greater use of computers for tracking our cases and following them. We think that demonstration programs are necessary throughout the State.

I heard the previous speaker mention something about jury management, and I agree with him that jury management is very important. We have now started a jury management program. It costs New York State about $20 million a year for its jurors. We feel that we are going to save upward of $4 million a year by better utilization of the jury system, and that it will be more efficient, it

will be more convenient for the lawyers and more comfortable for the jurors.

Senator SPECTER. One question which arose in my mind as a result of what Justice Williams had testified to, involved the procedures to acquire approval by, I believe he said it was the director, which would be you, before adjournments could be ordered in a certain category of cases. Then he said there was an issue as to constitutionality, which led to some trial judges to proceed on their own. What decision, if any, occasioned the constitutional challenge?

Judge WILLIAMS. Basically, Senator, I think that it was an attempt to really break away from the strictures of the prior rule.

Senator SPECTER. Well, did some court say that you as director did not have the authority to be the final word on adjournments in a given class of cases?

Judge WILLIAMS. Yes, a trial court. The issue of constitutionality had not even been raised in that decision that was rendered, it was just rendered as a statement because no one had even requested an adjournment, nor had one been granted or denied. But in the course of passing, this statement was made.

Senator SPECTER. So, one of the judges who was subject to your supervisory adjournment policy raised the issue?

Judge WILLIAMS. Yes, sir.

That has been rectified now. There is a new rule that turned it around, that is in effect now. We have raised and passed an administrative judges' rule that places the responsibility for adjournments in a special part in each county.

Senator SPECTER. In a special court, you say?

Judge WILLIAMS. In a special part in each county, where application for adjournment of cases in excess of 6 months ought to be made.

Senator SPECTER. In part, what do you mean by part?

Judge WILLIAMS. The various calendar parts that feed the trial part, and the application for adjournment are usually made in the calendar parts to prevent cases from being sent out to a trial part. So in each county we have a complex setup in that fashion: calendar parts and trial parts.

In each county, if a judge wants to make an application for an adjournment, and if the case is in excess of 6 months he would be referred to the special part where adjournment of cases over 6 months are being handled.

Senator SPECTER. Judge Ellerin, you testified that there were too many indictments, 25 percent, or a great many indictments, perhaps not too many indictments.

Judge ELLERIN. No, I never said too many, on the contrary, I indicated I thought that might be the result of improved procedures.

Senator SPECTER. Well, that was my question. Is it your judgment that there could be a better selection process with fewer indictments being brought by district attorneys?

Judge ELLERIN. Well, that was not the point I was trying to make, Senator.

Senator SPECTER. Well, aside from the point you were trying to make do you think that there is adequate discretion exercised by district attorneys in bringing only the important cases, given the available resources and the number of offenses?

Judge ELLERIN. Well, candidly, I am not involved in that process, so I really could not evaluate whether it is being done appropriately or not.

Senator SPECTER. Mr. Keenan, what do you think about that?

Mr. KEENAN. Yes, I think the district attorneys are generally exercising excellent discretion. As I pointed out, there were 8,922 arrests in New York City for motor vehicle theft, which is a felony. There are only 41 people that went to jail in the whole year. They are being very selective, in New York County the average number——

Senator SPECTER. How many did they indict, 41?

Mr. KEENAN. No; they indicted about 100, Senator.

Senator SPECTER. Only 100?

Mr. KEENAN. For auto theft. It is tragic. Auto theft is—you get a license——

Senator SPECTER. If the word goes out from this hearing, let it be known what happens to those who steal cars in New York City.

Mr. KEENAN. The word is out already. I am not betraying a State secret, Senator.

The fact of the matter is there are 30,000 felony arrests annually in New York County, in Manhattan alone, and they indict about 7,500. They are very careful that they do not overindict, any more than you used to when you were district attorney in Philadelphia, they do not overindict. They use discretion.

Senator SPECTER. What is the impact on plea bargaining in terms of the adequacy of sentences? A two-part question, and they interrelate. Chief Judge Cooke, starting with you. Is there too much plea bargaining? Are sentences adequate for repeat felons, robbers and burglars?

Judge COOKE. I would say this, that in New York State we try—and that means no plea bargaining—about 12 percent of our cases, which is over twice the national average, 12 to 15 percent of our cases go to trial, which indicates that it is not——

Senator SPECTER. Well, that may mean you are half as bad as the rest of the country.

Judge COOKE. Well, maybe, but we also, our jails, I will tell you at the present time, our prisons are at 115 percent of capacity.

Senator SPECTER. 47,000 in jail and 24,000 spaces. That is an impressive statistic, which means simply that there are not enough jails.

In 1973 the National Commission on Criminal Justice Standards and Goals said there should be an elimination of plea bargaining within 5 years. I was on the commission, I pushed that.

Has it happened? My own sense is we ought to expand the resources to try the repeat criminals, or to siphon out the lesser offenses.

But my view is, from all that I have seen, is that there is much too much plea bargaining.

Judge COOKE. That may be, but you want to remember that we are court administrators, that is why we are here today. We cannot impinge on the independence of the judiciary in making those decisions or on the district attorney, in recommending them.

Senator SPECTER. Well, how much pressure is brought to bear on them by the inability of the court system to accommodate the trials?

Judge COOKE. Our judges are very sensitive, and rightly so, on their judicial determinations and not being interfered with, and we have not done that. I want to point out to you that it came to mind when you were asking certain questions of Judge Williams, that going back to the old professor, Chief Justice Vanderbilt, who was dean of the New York University Law School, as you well know; and he said that the one great problem of court reform is the failure of people to distinguish between independence in judicial determinations from which there should be absolutely no interference, and another type, and that is administrative determinations. With administrative determinations, that can be and should be done by central court administration.

But we cannot go into a court and tell a judge whether or not he should accept the judge's recommendation.

Senator SPECTER. Do you have an individual——

Judge COOKE. A district attorney's recommendation, too.

Senator SPECTER. Do you have an individual judge calendar?

Judge COOKE. No; we do not have, it does not work well.

Senator SPECTER. Have you considered it? It does not work well?

Judge COOKE. Yes, we have explained that very carefully in a dissertation to the fund for modern courts. It works well in the Federal system, but you want to remember that a lawyer would be hard pressed to attend some 400 calendars in New York City. There are 400 parts of different courts that are going on every day. And by having cluster parts, by having one person in charge of a calendar, it reduces the down time, so it keeps all the courts in his cluster, all his area, busy.

Senator SPECTER. I would like to see the dissertation you made on that. I have a concern in that. And former Chief Justice Warren had an eloquent statement on that issue, and my own view is that, given the resources which you have to have, you have to have enough judges that the individual judge calendar is the way out; when you say the judges have to make their own decisions on accepting pleas, so be it. But if a judge insists on trying cases in the absence of an individual calendar, he will soon find himself without cases to try. If he sentences, as his discretion calls for, absent the problem of backlog.

Judge COOKE. Not in our cluster system, because that means his part will always be fed with cases. There are always a large number of cases ready and in the wings to go to any part.

Senator SPECTER. If he becomes known as a sentencing judge, he is going to have demands for jury trials, is he not?

Judge COOKE. Well, that is judge picking. We are against judge picking. And we believe that he should—that there should not be judge picking, and when it is done in a cluster part he has no say in it.

Senator SPECTER. Chief Judge Cooke, you will solve the backlog before you will solve the problem of judge picking, I predict. [Laughter.]

Judge COOKE. Well, I do not know, we have different other methods, we believe in doing away with disparity in criminal sentences.

Senator SPECTER. How can they do it? How can you avoid judge shopping, absent an individual judge calendar?

Judge COOKE. Because of the fact that the judge before whom the case is tried is determined by a central judge or one in charge of the calendar part.

Senator SPECTER. When the case goes to him, does it stay with him until it is finished?

Judge COOKE. When the clock ticks around the right case, it goes to wherever the judge is free.

Senator SPECTER. And if there is an adjournment, does it go back to him?

Judge COOKE. Well, once a case is assigned to a particular judge, it stays with him.

Senator SPECTER. So that's good. That's a form of an individual calendar. He keeps it then, if the defense lawyer does not like the judge that is assigned, he cannot get a new judge by finding a good reason to——

Judge COOKE. Oh, no. Could I just say about that, you see, one of the reasons that there is judge shopping is because in criminal cases at least, is because some judges are considered to be a tough sentencer or a light sentencer. One of the great shocking things in our country today, that really shocks people, and a very unjust thing, is the great disparity in criminal sentencing. Six of our States in the Union, largely in the Northeast, Maryland, Connecticut, Massachusetts, New Hampshire, Vermont, and Maine, have sentencing boards or councils whereby the sentences are reviewed. So if a sentence is—incidentally, I believe, too, that the district attorney should be given an opportunity to appeal.

Senator SPECTER. Do you have that in New York City, sir?

Judge COOKE. We do not, but I have advocated it.

We believe that the district attorney, so that the judge is not accused of being too lenient without some recourse, where there can be some review, are too severe, there should be an opportunity on either side to have it reviewed by an impartial group of judges or board members, as may be the case.

It will do a great deal to increase the integrity in respect of the system.

Senator SPECTER. Let me ask you the final question, if I may, and that is, speaking for the citizenry, do you think the sentences are adequate in New York City?

Mr. REPPETTO. We have supported the recommendation for determinate sentencing and prosecutorial review that the judge just enunciated.

Senator, let me just make one point. In New York City, there are 100,000 felony arrests annually, but only 20,000 indictments. A study was done by the police department on the question of whether there was undercharging—too few people indicted. There was a dispute over that study, and the commission was asked by the New York Times to be the referee.

It is our judgment that far more people could be indicted in New York City if there were the resources. It is probably not a good idea for the district attorneys to flood the system with indictments, given the limited resources, and that is why we favor a concentration on the repeat offenders, the career criminal group.

Senator SPECTER. A more central question than indicting more, because while many who are not indicted perhaps should be under an ideal system, but those who are indicted, there is a selection policy; but among those who are indicted, the repeat and violent offenders, I ask you as a representative of the citizens group, do you think that the sentences are adequate?

Mr. REPPETTO. No. And largely because of the reasons the chief judge enunciated. There is too much disparity in the system.

Senator SPECTER. How about the pressure to move cases, which is obviously the critical problem in New York City, as it is in so many places. Does that not put the pressure on courts that conclude cases without the kinds of sentencing that you would like, given an ideal system of adequacy of resources?

Mr. REPPETTO. I think that is certainly one of the reasons. You know we have something called the violent felony offender law in New York State, at least it was sold to the public a few years ago as such, which says that anybody that is convicted of a violent felony will go to prison. Actually something like 40,000 or 50,000 violent felony offenders are arrested every year; about 6,000 go to prison.

So, obviously, most people charged with violent felony offenses, for one reason or another, even if convicted, are not going to prison. Part of it is pressure of the system. I think there has to be a screening process but even where people have been screened, how can a career criminal have eight convictions and yet be receiving first jail sentence.

Senator SPECTER. Chief Judge Cooke, the last word.

Judge COOKE. Well, we thank you for the opportunity to come here today and express our views, and I will indicate now to you our willingness to come back at any time you wish

Senator SPECTER. Well, we very much appreciate your coming. This business of calendar control is of enormous importance, and I am personally delighted to see you challenging it and taking the steps which you have in what you testified to here today.

I, for one, am committed to working on the problem and try to bring Federal resources to bear. I am dismayed to see the testimony about the absence of word processors and the closed-circuit television, and we have made some strides with President Reagan's administration on this business of the Federal assistance. We have been meeting Congressman Hughes who heads the subcommittee in the House, and I who have the subcommittee in the Senate have pretty much worked out the legislation with White House approval. I met with Mr. Meese yesterday to put the finished touches on it, and I am optimistic that we will carry forward the best of the LEAA programs, which is a significant step forward, given the economies which are present today.

Then we will fashion out of this committee a career criminal bill which will seek to put some Federal pressure on the worst of the career criminals, so that if they go to the Federal court and face a 15-year minimum sentence, they will be motivated to be tried in the State courts, where they may get a 5-year sentence, that it will make it easier for a state court judge to impose a 5 to 10-year sentence than it is at the present time with the pressures now on the Federal system.

Judge COOKE. May I just say one thing, Senator, and I say this with modesty, but I say it because I know that my colleagues would want me to say it. I happen, within the last 2 weeks, to have been elected as the chairman of the National Conference of Chief Justices at its annual meeting in Wyoming, and I know that they are all interested in the things we have been talking about here this morning.

I pledge on behalf of the members of the Conference of Chief Justices, cooperation as far as that organization is concerned.

Senator SPECTER. That is a good note to end on.

Thank you all very much.

[Whereupon, at 11:24 a.m., the subcommittee adjourned.]

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